IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

	- X	
	:	Chapter 11
In re	:	
	:	Case No. 08-12229 (MFW)
WASHINGTON MUTUAL, INC. et al.,	:	
.	:	
Debtors.	:	Jointly Administered
	- X	
Plack Haras Capital I D at al	:	
Black Horse Capital LP et al.,		
Plaintiffs,	:	
,	:	
V.	:	Adversary Proceeding
	:	No. 10-51387 (MFW)
JPMorgan Chase Bank, N.A. et al.,	:	
	:	
Defendants.	:	
	X	

DECLARATION OF THEODORE A.B. McCOMBS IN SUPPORT OF DEFENDANTS' JOINT REPLY IN SUPPORT OF THEIR MOTIONS FOR SUMMARY JUDGMENT AND OPPOSITION TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

THEODORE A.B. McCOMBS hereby declares:

- 1. I am a member of the Bar of the State of New York and an associate at the law firm Sullivan & Cromwell LLP, counsel to Defendant JPMorgan Chase Bank, N.A. ("JPMC") in the above-captioned action. I submit this declaration in connection with Defendants' Joint Reply in Support of their Motions for Summary Judgment and Opposition to Plaintiffs' Cross-Motion for Summary Judgment, dated November 22, 2010.
- 2. Attached as Exhibits 1A to 1D are true and correct copies of corporate resolutions of the Board of Directors of Washington Mutual, Inc. ("WMI") authorizing the creation of WMI preferred stock Series I, J, L, M, and N, to be exchanged for the securities at issue in the above-captioned litigation ("Trust Preferred Securities") in a Conditional Exchange, as specified in more detail in the chart below:

Ex. No.	Description			
1A	Resolutions adopted by Unanimous Consent of the Board of Directors of WMI on February 21, 2006 (Trust I & Cayman)			

1B	Resolutions adopted by the Board of Directors of WMI on October 17, 2006 (Trust II)
1C	Resolutions adopted by the Board of Directors of WMI on April 17, 2007 (Trust III)
1D	Resolutions adopted by the Board of Directors of WMI on August 21, 2007 (Trust IV)

3. Attached as Exhibits 2A to 2E are true and correct copies of the Articles of Amendment to WMI's Amended and Restated Articles of Incorporation, establishing the WMI preferred stock Series I, J, L, M, and N, to be exchanged for the Trust Preferred Securities in a Conditional Exchange, as specified in more detail in the chart below:

Ex. No.	Description
2A	Articles of Amendment of WMI, dated March 6,
	2006, establishing the Series I Perpetual Non-
	cumulative Fixed-to-Floating Rate Preferred Stock
	(Trust I)
	Articles of Amendment of WMI, dated March 6,
2B	2006, establishing the Series J Perpetual Non-
	cumulative Fixed Rate Preferred Stock (Cayman)
	Articles of Amendment of WMI, dated December
2C	12, 2006, establishing the Series L Perpetual Non-
20	cumulative Fixed-to-Floating Rate Preferred Stock
	(Trust II)
	Articles of Amendment of WMI, dated May 23,
2D	2007, establishing the Series M Perpetual Non-
2D	cumulative Fixed-to-Floating Rate Preferred Stock
	(Trust III)
	Articles of Amendment of WMI, dated October 24,
2E	2007, establishing the Series N Perpetual Non-
ZE	cumulative Fixed-to-Flating Rate Preferred Stock
	(Trust IV)

4. Attached as Exhibits 3A to 3D are true and correct copies of the Deposit Agreements applicable to the Trust Preferred Securities, as specified in more detail in the chart below:

Ex. No.	Description				
	Deposit Agreement, dated as of March 7, 2006,				
3A	among WMI, Mellon as Depositary and Mellon as				
	Registrar (Trust I & Cayman)				
	Deposit Agreement, dated as of December 13,				
3B	2006, among WMI, Mellon as Depositary and				
	Mellon as Registrar (Trust II)				

3C	Deposit Agreement, dated as of May 24, 2007, among WMI, Mellon as Depositary and Mellon as Registrar (Trust III)
3D	Deposit Agreement, dated as of October 25, 2007, among WMI, Mellon as Depositary and Mellon as Registrar

- 5. Attached as Exhibit 4 is a true and correct copy of a notice sent by Wilmington Trust Company, as trustee for Issuer Trust I, concerning the Conditional Exchange, dated March 31, 2009, with Bates numbers WTC 011484 WTC 011486.
- 6. Attached as Exhibits 5A and 5B are true and correct copies of the reports of Prof. Christopher James and Prof. Allen Ferrell, expert witnesses on behalf of the Defendants, as specified in more detail in the chart below:

Ex. No.	Description		
5A	Expert Report of Prof. Christopher M. James (Nov. 15, 2010)		
5B	Report of Allen Ferrell, Ph.D. (Nov. 14, 2010)		

7. Attached as Exhibits 6A to 6G are true and correct copies of the deposition testimony of witnesses on behalf WMI and certain Plaintiffs pursuant to Fed. R. Civ. Pro. 30(b)(6), as specified in more detail in the chart below:

Ex. No.	Description
	Transcript (compressed) of Peter Freilinger's
6A	Deposition Testimony on behalf of WMI, dated
	Nov. 15, 2010
	Transcript (compressed) of Dale Chappelle's
6B	Deposition Testimony on behalf of Black Horse
	plaintiffs, dated Nov. 11, 2010
	Transcript (compressed) of Peter Finelli's
6C	Deposition Testimony on behalf of Riva Ridge
	plaintiffs, dated Nov. 12, 2010
	Transcript (compressed) of Philip Broenniman's
6D	Deposition Testimony on behalf of Visium
	plaintiffs, dated Nov. 12, 2010
	Transcript (compressed) of David Thompson's
6E	Deposition Testimony on behalf of VR Capital
	plaintiffs, dated Nov. 16, 2010
	Transcript (compressed) of Joseph McInnis's
6F	Deposition Testimony on behalf of Greywolf
	plaintiffs, dated Nov. 18, 2010
	Transcript (compressed) of Christopher Paige's
6G	Deposition Testimony on behalf of Paige plaintiffs,
	dated Nov. 19, 2010

8. Attached as Exhibits 7A to 7C are true and correct copies of updated charts that summarize the trading data produced by Plaintiffs to date, submitted as summary charts of voluminous writings under Federal Rule of Evidence 1006, as specified in more detail in the chart below:

Ex. No.	Description
	Plaintiffs' Trading Activity in Washington Mutual
7A	Trust Preferred Securities & WMI REIT Series
	Preferred Equity (Chart)
	Timeline of Plaintiffs' Trading Activity in
7B	Washington Mutual Trust Preferred Securities &
	WMI REIT Series Preferred Equity (Chart)
	Summary of Plaintiffs' Transactions in Washington
7C	Mutual Trust Preferred Securities Prior to 9/26/08
/C	and in WMI REIT Series Preferred Equity After
	1/1/10 (Chart)

Executed on this twenty-second day of November, 2010, in New York, New York.

I declare under penalty of perjury that the foregoing is true and correct.

Theodore A.B. McCombs

Ex. 1A

WASHINGTON MUTUAL, INC.

Board of Directors Resolutions

WHEREAS, Washington Mutual, Inc. (the "Company") indirectly owns all of the issued and outstanding common stock of University Street, Inc. ("University Street");

WHEREAS, University Street proposes to cause the formation of a Delaware limited liability company (the "LLC") and in connection therewith University Street and Washington Mutual Bank will contribute to the LLC assets of approximately \$5.4 billion in the aggregate;

WHEREAS, it is proposed that the LLC will issue common interests, substantially all of which will be issued to University Street;

WHEREAS, it is proposed that the LLC will issue to WMB or its designee two series or classes of preferred interests (the "LLC Preferred Interests") which LLC Preferred Interests in the aggregate will not exceed \$2.0 billion;

WHEREAS, it is proposed that one class of the LLC Preferred Interests will have a fixed dividend rate and the other class will have a dividend rate which is fixed for approximately 5 years and thereafter is variable;

WHEREAS, it is proposed that the LLC Preferred Interests will be transferred to two special purpose entities which in turn will issue substantially similar securities (the "SPE Securities") to investors;

WHEREAS, under specified circumstances, each class of SPE Securities will automatically be exchanged for preferred stock of the Company or for depositary shares representing fractional interests in preferred stock of the Company;

WHEREAS, in a set of resolutions adopted at its January 17, 2006 meeting (the "Prior Resolutions"), the Board previously authorized the issuance of two series of such preferred stock of the Company, established substantive terms of each series, delegated authority to appropriate officers of the Company to determine, within the limits specifically prescribed in the Prior Resolutions, the designation and relative rights, preferences and limitations of each series and provided for other matters relating to the preferred stock and the LLC preferred interests; and

WHEREAS, the Board now desires to amend and supplement certain of the terms of each of the series of preferred stock of the Company and certain of the provisions in the Prior Resolutions.

THEREFORE, IT IS HEREBY RESOLVED, that the two series of preferred stock authorized by the Prior Resolutions shall be designated as the "Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" (the "Series I Preferred Stock") and the "Series J Perpetual Non-cumulative Fixed Rate Preferred Stock" (the "Series J Preferred Stock"), respectively;

RESOLVED FURTHER, that notwithstanding the Prior Resolutions, the Series I Preferred Stock and the Series J Preferred Stock (collectively, the "Preferred Stock") shall each

have rights, preferences and limitations which are set forth in the respective designations for each series presented at this meeting subject to the completion and any modification by Authorized Officers as herein provided (the "Designations"):

RESOLVED FURTHER, that the Board hereby authorizes, and delegates the authority to, any two of the Authorized Officers (as defined in the Prior Resolutions) to designate, finalize, determine and complete the rights, preferences, privileges, restrictions and other matters, and to take such other actions, relating to the Preferred Stock, subject to the limits in the Prior Resolutions relating to the number of shares in each series, liquidation amount, maturity, holders' redemption rights, sinking fund and convertibility and to the following limits:

- (i) the Series I Preferred Stock will be at a fixed rate from issuance not to exceed 7.50% per annum until March 15, 2011 or another date in March 2011 as provided in the completed Designation and thereafter will be at a floating rate for each dividend period at a rate equal to the 3-month LIBOR applicable to such period (or in circumstances set forth in the Designation 4.75% per annum, if higher) plus a spread which will not exceed 275 basis points;
- (ii) the Series J Preferred Stock will be at a fixed rate not to exceed 8.0% per annum;
- (iii) the Company will be able to redeem the Preferred Stock any time on or after March 15, 2011 or another date in March 2011 as provided in the completed Designation; and
- (iv) the holders of the Preferred Stock will have no voting rights except (i) to the extent, if any, required by Washington law and (ii) in the event that dividends are not declared and paid on a series of the Preferred (or on certain other classes or series as described in the completed Designation) then holders of the Preferred Stock (together with any other classes or Series described in the completed Designation) will have the right to elect two directors of the Company at the next annual meeting;

RESOLVED FURTHER, that the authorization and delegation in the immediately preceding resolution shall, subject to the limits therein, include, without limitation, the authority to determine the number of shares of each series of Preferred Stock to be authorized, to determine the dividend rates, to specify additional redemption rights of the Company, to specify limits on the Company's rights to pay dividends on other equity securities if dividends have not been paid on the Preferred Stock, to approve the form of any stock certificate and to prepare and authorize the filing of articles of amendment for each series of Preferred Stock with the Secretary of State of the State of Washington;

RESOLVED FURTHER, that the number of shares authorized in the Designations as completed by the Authorized Officers as provided herein shall upon filing of the articles of amendment for each series be fully reserved for issuance;

RESOLVED FURTHER, that the declaration of covenants or other agreements referred to in clause (iii) of the last resolution in the Prior Resolutions may also include such other provisions or items as any Authorized Officer deems necessary or advisable including without limitation restrictions on dividends and distributions on the Company's other equity securities if of funds for any redemptions;

RESOLVED FURTHER, that except as hereby amended and supplemented, the Prior Resolutions remain in full force and effect; and

RESOLVED FURTHER, that any Authorized Officer, together with other proper officers of the Company (including, without limitation, those authorized from time to time pursuant to the Company's Asset and Liability Management Policy and the standards and procedures from time to time in effect thereunder), is hereby authorized to negotiate, enter into, execute and deliver any and all additional agreements, any undertakings or other documents or supplemental agreements on behalf of the Company (including, without limitation, filings or applications with banking regulators, securities regulators or stock exchanges, domestic or foreign) and to take any other actions, in each case, as such Authorized Officer or other proper officer deems to be necessary or advisable in connection with the issuance of the Preferred Stock, the LLC Preferred Interests or the SPE Securities or to further the intent of these resolutions or the Prior Resolutions, subject to the limits set forth in these resolutions.

ACTION OF AUTHORIZED OFFICERS WASHINGTON MUTUAL, INC.

The undersigned officers of Washington Mutual, Inc. (the "Company") are Authorized Officers as defined in the resolutions (the "Resolutions") adopted by the Board of Directors of the Company on January 17, 2006 and February 21, 2006 relating to the issuance by the Company of two series of preferred stock and related matters and, pursuant to the authority granted in the Resolutions, hereby approve and authorize the taking of the following actions:

- 1. In connection with the issuance of the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock") and Series J Perpetual Non-cumulative Fixed Rate Preferred Stock ("the Series J Preferred Stock"), the dividend rates, number of shares and other information for the Series I Preferred Stock shall be as set forth on Exhibit A hereto and the dividend rates, number of shares and other information for the Series J Preferred Stock shall be as set forth on Exhibit B hereto.
- 2. The Purchase Agreement to be dated as of February 24, 2006 by and among the Company, Washington Mutual Bank, Washington Mutual Preferred Funding LLC, Washington Mutual Preferred Funding Trust I, Washington Mutual Preferred Funding (Cayman) I Ltd., and Goldman, Sachs & Co. relating to the Series I Preferred Stock and the Series J Preferred Stock is hereby authorized and approved and may be executed and delivered on behalf of the Company by any Authorized Officer (as defined in the Resolutions).

[Signature Page Follows]

DATED this 24th day of February, 2006.

Name: _ Title: __

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ACTION OF AUTHORIZED OFFICERS

WASHINGTON MUTUAL, INC.

The undersigned officers of Washington Mutual, Inc. (the "Company") are Authorized Officers as defined in the resolutions (the "Resolutions") adopted by the Board of Directors of the Company on January 17, 2006 and February 21, 2006 relating to the authorization by the Company of two series of preferred stock and related matters and, pursuant to the authority granted in the Resolutions, hereby approve and authorize the following:

- The Articles of Amendment relating to the Company's Series I Perpetual Noncumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock"), including the designation, rights, preference, privileges, restrictions and other matters relating to the Series I Preferred Stock contained therein, in the form attached hereto as Exhibit A (the "Series I Articles of Amendment"), are hereby authorized, approved and adopted.
- The Articles of Amendment relating to the Company's Series J Perpetual Noncumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), including the designation, rights, preference, privileges, restrictions and other matters relating to the Series J Preferred Stock contained therein, in the form attached hereto as Exhibit B (the "Series J Articles of Amendment"), are hereby authorized, approved and adopted.
- The execution of each of the Series I Articles of Amendment and the Series J Articles of Amendment by any Authorized Officer is hereby authorized and approved, and the filing thereof by the Company with the Secretary of State of the State of Washington is hereby authorized and approved.

DATED this 6th day of March, 2006.

WASHINGTON MUTUAL, INC.

Name: Robert J. Williams

Title: Senior Nice President and Treasurer

Name: Peter/Freilinger

Title: Senio Vice President

ACTION OF AUTHORIZED OFFICERS

WASHINGTON MUTUAL, INC.

The undersigned officers of Washington Mutual, Inc. (the "Company") are Authorized Officers as defined in the resolutions (the "Resolutions") adopted by the Board of Directors of the Company on January 17, 2006 and February 21, 2006 relating to the authorization by the Company of two series of preferred stock and related matters and, pursuant to the authority granted in the Resolutions, hereby approve and authorize the following:

- 1. The form of stock certificate relating to the Company's Series I Perpetual Noncumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock") attached hereto as Exhibit A is hereby authorized and approved.
- 2. The form of stock certificate relating to the Company's Series J Perpetual Noncumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock") attached hereto as Exhibit B is hereby authorized and approved.

DATED this 6th day of March, 2006.

WASHINGTON MUTUAL, INC.

Name: Robert J./Williams

Title: Senior Vice President and Treasurer

Name: Peter/Freilinger Title: Senior Vice President

Ex. 1B

WASHINGTON MUTUAL, INC.

Board of Directors Resolutions

WHEREAS, Washington Mutual, Inc. (the "Company") indirectly owns all of the issued and outstanding common stock of University Street, Inc. ("University Street");

WHEREAS, Washington Mutual Preferred Funding LLC, a Delaware limited liability company ("WMPF LLC"), is a subsidiary of University Street;

WHEREAS, WMPF LLC previously issued \$2 billion liquidation preference of preferred membership interests, in two series, to Washington Mutual Bank ("WMB") in exchange for a corresponding amount of mortgage loan assets;

WHEREAS, it is proposed that WMPF LLC will issue to University Street or to a special purpose entity (the "SPE") a new series or class of preferred interests (the "LLC Preferred Interests") which LLC Preferred Interests in the aggregate will not exceed \$1.0 billion;

WHEREAS, if the LLC Preferred Interests are issued to University Street, then University Street will, in turn, transfer or sell the LLC Preferred Interests to the SPE;

WHEREAS, upon receipt of the LLC Preferred Interests, the SPE will, in turn, issue substantially similar securities (the "SPE Securities") to investors for cash and will pay University Street or WMPF LLC an amount equal to the proceeds of such sale in payment for the LLC Preferred Interests;

WHEREAS, under specified circumstances, the SPE Securities will automatically be exchanged for depositary shares representing fractional interests in a new series of preferred stock of the Company; and

WHEREAS, the Board desires to authorize the issuance of such new series of such preferred stock, to establish substantive terms of such series, to delegate authority to appropriate officers of the Company to determine, within the limits specifically prescribed in these resolutions, the designation and relative rights, voting powers, preferences and limitations of such series and to provide for other matters relating to the preferred stock and the LLC Preferred Interests.

THEREFORE, IT IS HEREBY RESOLVED, that there is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Series L Perpetual Non-cumulative Fixed/Floating Rate Preferred Stock" (the "Series L Preferred Stock"). The number of shares constituting such series shall not exceed 1,000. The stock in such series shall have no par value.

FURTHER RESOLVED, that the Series L Preferred Stock shall have preferences, limitations, voting powers and relative rights set forth below, subject to completion or modification by the Authorized Officers as provided herein:

DESIGNATION

Section 1. <u>Designation</u>. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" (the "Series L Preferred Stock"). The number of shares constituting such series shall be ______. The Series L Preferred Stock shall have no par value per share and the liquidation preference of the Series L Preferred Stock shall be \$1,000,000.00 per share. Shares of Series L Preferred Stock shall be issued if and only if a Conditional Exchange occurs.

Section 2. Ranking.

The Series L Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed Floating Rate Preferred Stock (the "Series I Preferred Stock"), the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), the Company's Series K Perpetual Non-Cumulative Floating Rate Preferred Stock (the "Series K Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series L Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with the Series L Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company, including the Common Stock (collectively referred to as "Junior Securities").

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- "3-Month USD LIBOR" means, with respect to any Dividend Period, a rate (a) determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, the Company or an affiliate of the Company on behalf of the Company will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Company to provide the Company with a quotation of the rate at which three-month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Company. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted as of approximately 11:00 am., New York time, on the first day of such Dividend Period by three major banks in New York City, New York selected by the Company for loans in U.S. dollars to leading European banks, for a three-month period

commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.

- (b) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (c) "Common Stock" has the meaning set forth in Section 2.
 - (d) "Company" means Washington Mutual, Inc., a Washington corporation.
- (e) "Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in ______, 2016 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series L Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.
- (f) "Comparable Treasury Price" means with respect to any Redemption Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.
- (g) "<u>Conditional Exchange</u>" means the automatic exchange of the Trust Securities into depositary shares representing an interest in the Series L Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
 - (h) [Intentionally Omitted]
 - (i) "Designation Date" means _____, 2006
 - (j) "Dividend Payment Date" has the meaning set forth in Section 4(b).
 - (k) "<u>Dividend Period</u>" has the meaning set forth in Section 4(b).
- (I) "Exchange Event" means the occurrence of any one of the following at a time as the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Trust Securities into depositary shares representing an interest in the Series L Preferred Stock in anticipation of WMB becoming undercapitalized under the Prompt Corrective Action Regulations or of the OTS taking any supervisory action that limits the payment of dividends by WMB.

142058.3 WM: Confidential Limited Access

- (m) "Fixed-to-Floating Rate Delaware Preferred Securities" means the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series [], liquidation preference \$[1,000] per security, issued or to be issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
- (n) <u>"Independent Investment Banker"</u> means an independent investment banking institution of national standing appointed by the Company.
 - (o) "Junior Securities" has the meaning set forth in Section 2.
- (p) "<u>LIBOR Business Day</u>" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.
- (q) "<u>LIBOR Determination Date</u>" means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.
- (r) "<u>US LIBOR Telerate Page 3750</u>" means the display page of Moneyline's Telerate Service designated as 3750 (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to 3-Month USD LIBOR).
- (s) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (t) "Parity Securities" has the meaning set forth in Section 2.
 - (u) "Primary Treasury Dealer" has the meaning set forth in Section 3(x).
- (v) "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation.
- (w) "Redemption Date" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (x) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (y) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (z) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Fixed-to-

Floating Rate Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Fixed-to-Floating Rate Delaware Preferred Securities.

- (aa) "Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (bb) "<u>Trust Securities</u>" means the Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities, Series [A-__], liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust II, a Delaware statutory trust.
 - (cc) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (dd) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. <u>Dividends</u>.

- (a) Holders of shares of Series L Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series L Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series L Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period", except that, if the Series L Preferred Stock is outstanding on ___ 15, 2016, the Dividend Period ending in 2016 shall be to but excluding 15, 2016 (whether or not a Business Day) and the Dividend Period ending in [2017] shall commence on _, 2016 (whether or not a Business Day).

(c) If the date of issuance of the Series L Preferred Stock is prior to the day
initionisticity precedificial in 2016 of the second
rst Business Day after 15, 2016, then from such date of issuance to but not including
15, 2016 (whether or not a Rusiness Day) divided to 1 issuance to but not including
15, 2016 (whether or not a Business Day), dividends, if, when and as declared by the
oard of Directors, will be, for each outstanding share of Series L Preferred Stock, at an annual
ate of% on the per share liquidation preference of the Series L Preferred Stock, at an annual stock at the later of the (i)
15 2016 and (ii) the data of incurred at the contract the
referred block, dividerios, if, when and as declared by the Doord of Divider and the state of th
rectained by detecting the relief of the state of the new characteristics
reference of the Series L Preferred Stock equal to [the greater of (x)] 3-Month USD LIBOR for

the related Dividend Period plus	% [or (v)	percent (0/_\1
Dividends payable for any Dividend I	Period greater or less th	nan a full Dividend Do	_/0/J. vried will be
computed on the basis of twelve 30-c	day months, a 360-day	vear and the actual	niou will be
elapsed in the period if such Dividend	d Period ends in or prio	ir to 2018: #	Turnber of days
dividends payable for any period great	ater or less than a full d	lividend period will be	ierearret
the basis of the actual number of day	s in the relevant period	i divided by 260 Me :	computed on .
paid on any dividend navment of the	Series Preferred Sta	- MINIMEN DY 200. 140 1	nterest will be
dividends payable for any period greathe the basis of the actual number of day paid on any dividend payment of the	ater or less than a full d /s in the relevant period	lividend period will be I divided by 360 No i	computed on

- (d) Dividends in the Series L Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series L Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series L Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series L Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.
- (e) If full dividends on all outstanding shares of the Series L Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. <u>Liquidation</u>.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series L Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series L Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series L Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series L Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series L Preferred Stock and the corresponding amounts payable on any other Securities of equal ranking, the holders of Series L Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.
- Section 6. <u>Maturity</u>. The Series L Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series L Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series L Preferred Stock shall be redeemable at the option of the Company, in whole but not in part, upon the occurrence of a Regulatory Capital Event at a cash redemption price equal to the sum of: (X) the greater of (i) \$1,000,000 per share, or (ii) the sum of present values of \$1,000,000 per share and all undeclared dividends for the Dividend Period from the Redemption Date to and including the Dividend Payment Date in ______, 2016, discounted to the Redemption Date on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate (as calculated by an Independent Investment Banker), plus 0.30%; and (Y) any declared but unpaid dividends to the Redemption Date.
- (c) In addition to the redemption described in Section 7(b), the Series L Preferred Stock shall be redeemable in whole or in part at the option of the Company, on (i) ______15, 2016 (or, in the event that ______15, 2016 is not a Business Day, the next Business Day) and (ii) on each ______15 (or if such day is not a Business Day, the next Business Day) of each [fifth or tenth] year after 2016. Such redemption shall be at a cash redemption price of \$1,000,000 per share, plus any declared and unpaid dividends to the Redemption Date, without accumulation of any undeclared dividends.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series L Preferred Stock, not less than thirty nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series L Preferred Stock. The notice of redemption shall include a statement of (i) the redemption date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series L Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series L Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series L Preferred Stock accordingly.

Section 8. <u>Voting Rights</u>.

- (a) Holders of the Series L Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, or (ii) voting rights, if any, described in Section 8(b).
- (b) If after issuance of the Series L Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series L Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series L Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends or the Series L Preferred Stock

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and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends for the fourth consecutive Dividend Period or its equivalent.

- (c) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at the first annual meeting of shareholders after the Company pays dividends for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends on the Series L Preferred Stock and any Voting Parity Securities for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series L Preferred Stock. After the term of such additional directors terminates, the holders of the Series L Preferred Stock will not be able to elect additional directors unless dividends on the Series L Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.
- (d) Any additional director elected by the holders of the Series L Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series L Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. As long as dividends on the Series L Preferred Stock or any Voting Parity Securities have not been paid for six Dividend Periods or their equivalent, any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series L Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at the same meeting at which such removal is considered.

Section 9. <u>Certificates</u>. The Company may at its option issue the Series L Preferred Stock without certificates.

RESOLVED FURTHER, that for purposes of these resolutions and the transactions contemplated hereby, each of the following shall be an "Authorized Officer": (i) the Chief Executive Officer, (ii) the Chief Operating Officer, (iii) the Chief Financial Officer, (iv) any Senior Executive Vice President, (v) the Executive Vice President — Corporate Strategy & Development, (vi) the Senior Vice President and Treasurer, (vii) any Senior Vice President reporting directly to the Senior Vice President and Treasurer and (viii) the Senior Vice President and Controller.

RESOLVED FURTHER, that the Board hereby authorizes, and delegates the authority to, any one of the Authorized Officers to designate, finalize, determine and complete the preferences, limitations, voting powers and relative rights of the Series L Preferred Stock, subject to the limits specified in these resolutions;

RESOLVED FURTHER, that the authorization and delegation in the immediately preceding resolutions shall include, without limitation, the authority to determine the number of shares of the Series L Preferred Stock to be authorized, to determine the dividend rates and the liquidation amount, to designate further situations in which the Company has the option to redeem the Series L Preferred Stock with or without make-whole provisions, to designate circumstances involving amendments to the Company's articles of incorporation (as amended) or involving mergers or other combinations or similar events in which holders of Series L Preferred Stock shall have voting rights, to approve the form of any stock certificate and to prepare and authorize the filing of articles of amendment for each series of Series L Preferred Stock with the Secretary of State of the State of Washington; provided, however, that (i) the number of shares of Series L Preferred Stock authorized shall not exceed 1,000, (ii) the

liquidation preferences shall not exceed \$1,000,000 per share, (iii) the dividend rate will be at a fixed rate not to exceed 9.00% per annum from the date of the issuance until a date which is approximately 10 years from the date of issuance of the LLC Preferred Interests, as provided in the completed Designation and thereafter will be at a floating rate equal to the 3-month LIBOR applicable to such period plus a spread which will not exceed 275 basis points, except that such floating rate may be subject each dividend period to a floor which shall not exceed 6.00% per annum, and (iv) the Company will have the right to redeem the Series L Preferred Stock on a date that occurs no later than the first dividend payment date which is more than 10 years after the date on which the LLC Preferred Interests and the SPE Securities are issued.

RESOLVED FURTHER, that the Series L Preferred Stock may be issued to a depositary, which shall issue depositary shares each representing a fractional interest in the shares of a series of the Series L Preferred Stock;

RESOLVED FURTHER, that the Company is hereby authorized to enter into and perform its obligations under a deposit agreement to issue depositary shares, and any Authorized Officer is authorized to select the depositary and to negotiate, execute and deliver such deposit agreement on behalf of the Company;

RESOLVED FURTHER, that the number of shares authorized in the Designation as completed by an Authorized Officer shall upon filing of the articles of amendment for the S4eries L Preferred Stock be fully reserved for issuance;

RESOLVED FURTHER, that the Authorized Officers, or any of them, are authorized and empowered, on behalf of the Company and in its name, with full power and authority to delegate such authority to one or more attorneys-in-fact or agents acting for such Authorized Officers, or any of them, pursuant to a power of attorney, in the event that it is deemed necessary or desirable so to do, in connection with the offering of the Preferred Stock, the LLC Preferred Interests or the SPE Securities in a private offering and/or in an offering effected in reliance on Regulation S promulgated under the Securities Act of 1933, as amended (the "Securities Act"), to prepare, or cause to be prepared, an offering circular or offering memorandum with respect to such securities (and any supplements or amendments thereto), as the Authorized Officers, or any of them, taking such action shall approve in connection therewith in order to effect the offering of such securities in a private offering; and

RESOLVED FURTHER, that any Authorized Officer, together with other proper officers of the Company (including, without limitation, those authorized from time to time pursuant to the Company's Asset and Liability Management Policy and the standards and procedures from time to time in effect thereunder), is hereby authorized to negotiate, enter into, execute and deliver any and all additional agreements (which agreements may include, without limitation, (i) purchase agreements with Goldman Sachs & Co., or an affiliate thereof, and/or other institutional purchasers, (ii) exchange agreements relating to the exchange of the LLC Preferred Interests and the SPE Securities into the Series L Preferred Stock, and (iii) declaration of covenants or other agreements, in favor of holders of SPE Securities and/or specified indebtedness of the Company, prohibiting the issuance by the Company of preferred stock senior to the Series L Preferred Stock, restricting sources of funds used to redeem the SPE Securities, or restricting dividends and distributions on the Company's stock if dividends are not paid on the SPE Securities), any undertakings or other documents or supplemental agreements on behalf of the Company (including, without limitation, filings or applications with banking regulators, securities regulators or stock exchanges, domestic or foreign) and to take any other actions, in each case, as such Authorized Officer or other proper officer deems to be necessary

or advisable in connection with the issuance of the Series L Preferred Stock, the LLC Preferred Interests or the SPE Securities or to further the intent of these resolutions, subject to the limits set forth in these resolutions.

Ex. 1C

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Appendix D - Approval of Actions related to REIT Preferred Issuance

Board of Directors Resolutions

WHEREAS, Washington Mutual, Inc. (the "Company") indirectly owns all of the issued and outstanding common stock of University Street, Inc. ("University Street");

WHEREAS, Washington Mutual Preferred Funding LLC, a Delaware limited liability company ("WMPF LLC"), is a subsidiary of University Street;

WHEREAS, WMPF LLC previously issued \$2.5 billion liquidation preference of preferred membership interests to Washington Mutual Bank ("WMB"), in three series, in exchange for a corresponding amount of mortgage loan assets;

WHEREAS, it is proposed that WMPF LLC will issue to University Street, to a special purpose entity (the "SPE") or to WMB, as the case may be, a new series or class of preferred interests (the "LLC Preferred Interests") which LLC Preferred Interests in the aggregate will not exceed \$1 billion:

WHEREAS, if the LLC Preferred Interests are issued to University Street, then University Street will, in turn, transfer or sell the LLC Preferred Interests to the SPE and if the WMPF LLC interests are issued to WMB, then WMB will, in turn, transfer or sell the LLC Preferred interests to the SPE:

WHEREAS, upon receipt of the LLC Preferred Interests, the SPE will, in turn, issue substantially similar securities (the "SPE Securities") to investors for cash;

WHEREAS, under specified circumstances, the SPE Securities will automatically be exchanged for depositary shares representing fractional interests in a new series of preferred stock of the Company; and

WHEREAS, the Board desires to authorize the issuance of such new series of such preferred stock, to establish substantive terms of such series, to delegate authority to appropriate officers of the Company to determine, within the limits specifically prescribed in these resolutions, the designation and relative rights, voting powers, preferences and limitations of such series and to provide for other matters relating to the preferred stock and the LLC Preferred Interests.

THEREFORE, IT IS HEREBY RESOLVED, that there is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock which, depending on whether the Authorized Officers select a fixed-to-floating dividend rate or a fixed dividend rate, shall be designated as the "Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" or the "Series M Perpetual Non-cumulative Fixed Rate Preferred Stock" (the "Series M Preferred Stock"). The number of shares constituting such series shall not exceed 1,000. The stock in such series shall have no par value.

FURTHER RESOLVED, that the Series M Preferred Stock shall have preferences, limitations, voting powers and relative rights set forth below, subject to completion or modification by the Authorized Officers as provided herein:

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DESIGNATION

	Section 1.	Designation.	There is her	eby created	out of the	authorized a	and unissued
share	es of preferred	stock of the Co	mpany a seri	es of preferr	ed stock de	esignated a	s [the "Series
M Pe	rpetual Non-cu	mulative Fixed	-to-Floating R	ate Preferre	d Stock" or	the "Series	M Perpetual
Non-	cumulative Fixe	d-Rate Preferr	ed Stock", de	pending on	whether a t	ixed-to-floa	ting dividend
rate o	or a fixed divide	nd rate is sele	cted] (the "Se	ries M Prefe	rred Stock'). The num	ber of shares
cons	tituting such sei	ies shall be		. The Serie	s M Preferr	ed Stock sh	nall have no
par v	alue per share	and the liquida	tion preferenc	e of the Ser	ries M Prefe	erred Stock	shall be
\$1,00	00,000.00 per s	hare. Shares o	of the Series I	M Preferred	Stock shall	be issued i	if and only if
a Co	nditional Exchai	nge occurs.					-

Section 2. Ranking.

The Series M Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock"), the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), the Company's Series K Perpetual Non-Cumulative Floating Rate Preferred Stock (the "Series K Preferred Stock"), the Company's Series L Perpetual Noncumulative Fixed-to-Floating Rate Preferred Stock (the "Series L Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series M Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with or senior to the Series M Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company, including the Common Stock (collectively referred to as "Junior Securities"). The Company shall have the right to authorize and/or issue additional shares or series of Junior Securities and Parity Securities without the consent of the holders of the Series M Preferred Stock.

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- (a) "3-Month USD LIBOR" means, with respect to any Dividend Period, a rate determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, the Company or an affiliate of the Company on behalf of the Company will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Company to provide the Company with a quotation of the rate at which three-

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month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Company. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted as of approximately 11:00 am., New York time, on the first day of such Dividend Period by three major banks in New York City, New York selected by the Company for loans in U.S. dollars to leading European banks, for a three-month period commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.

- (b) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (c) "Common Stock" has the meaning set forth in Section 2.
 - (d) "Company" means Washington Mutual, Inc., a Washington corporation.
- (e) "Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in ______, [2017] that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series M Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.
- (f) "Comparable Treasury Price" means with respect to any Redemption Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.
- (g) "Conditional Exchange" means the automatic exchange of the Trust Securities into depositary shares representing an interest in the Series M Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
- (h) "Delaware Preferred Securities" means [the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series [__] or the Fixed Rate Perpetual Non-cumulative Preferred Securities, Series [__], depending on whether a fixed-to-floating rate or a fixed rate is selected], liquidation preference \$[1,000] per security, issued or to be issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
 - (i) "Designation Date" means ______, 2007.
 - (j) "Dividend Payment Date" has the meaning set forth in Section 4(b).

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- (k) "<u>Dividend Period</u>" has the meaning set forth in Section 4(b).
- (I) "Exchange Event" means the occurrence of any one of the following at a time as the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Trust Securities into depositary shares representing an interest in the Series M Preferred Stock in anticipation of WMB becoming undercapitalized under the Prompt Corrective Action Regulations or of the OTS taking any supervisory action that limits the payment of dividends by WMB.
- (m) <u>"Independent Investment Banker"</u> means an independent investment banking institution of national standing appointed by the Company.
 - (n) "Junior Securities" has the meaning set forth in Section 2.
- (o) "<u>LIBOR Business Day</u>" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.
- (p) "<u>LIBOR Determination Date</u>" means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.
- (q) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (r) "Parity Securities" has the meaning set forth in Section 2.
 - (s) "Primary Treasury Dealer" has the meaning set forth in Section 3(x).
- (t) "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation.
- (u) "Rating Agencies" means, at any time, Standard & Poor's Rating Services, a Division of the McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, inc., but only in the case of each such agency if it is rating the relevant security, including the Delaware Preferred Securities at the relevant time or, if none of them is providing a rating for the relevant security, including the Delaware Preferred Securities at such time, then any "nationally recognized statistical rating organization" as that phrase is defined for purposes of Rule 436(g)(2) under the Securities Act of 1933, as amended, which is rating such relevant Security.
- (v) A "Rating Agency Event" occurs when the Company reasonably determines that an amendment, clarification or change has occurred in the equity criteria for securities such as the Delaware Preferred Securities of any Rating Agency that then publishes a rating for the Company which amendment, clarification or change results in a lower equity

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credit for the Company than the respective equity credit assigned by such Rating Agency to the Delaware Preferred Securities on the Designation Date.

- (w) "Redemption Date" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (x) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company, provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (y) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (z) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Fixed-to-Floating Rate Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Fixed-to-Floating Rate Delaware Preferred Securities.
 - (aa) "Series I Preferred Stock" has the meaning set forth in Section 2.
 - (bb) "Series J Preferred Stock" has the meaning set forth in Section 2.
 - (cc) "Series K Preferred Stock" has the meaning set forth in Section 2.
 - (dd) "Series L Preferred Stock" has the meaning set forth in Section 2.
 - (ee) "Series M Preferred Stock" has the meaning set forth in Section 1.
- (ff) ["<u>Ten-Year Date</u>"] means the Dividend Payment Date in [_____2017] and the Dividend Payment Date of each tenth succeeding year (i.e., [_____2027, _____2037], etc.) assuming in each case that the Series M Preferred Stock has been issued.
- (gg) "<u>Treasury Rate</u>" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (hh) "<u>Trust Securities</u>" means the Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities, Series [___], liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust III, a Delaware statutory trust.

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- (ii) "<u>US LIBOR Telerate Page 3750</u>" means the display page of Moneyline's Telerate Service designated as 3750 (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to 3-Month USD LIBOR).
 - (jj) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (kk) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. <u>Dividends</u>.

- (a) Holders of shares of Series M Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series M Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series M Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period" [the following clause to be added if a fixed-to-floating rate is selected:, except that, if the Series M Preferred Stock is outstanding on ______ 15, [____], the Dividend 15, [] (whether or not a Period ending in ___ [__] shall be to but excluding ____ Business Day) and the Dividend Period ending in] shall commence on ___15, [____] (whether or not a Business Day)]. If the date of issuance of the Series M Preferred Stock is prior to the day ____ 15, [___] is not a Business Day, the immediately preceding _ ____ 15, [____] or, if __ __ 15, [____], then from such date of issuance to but not first Business Day after 15, [] (whether or not a Business Day), [if fixed rate is selected, delete preceding language in Section 4(c) and insert "After issuance of the Series M Preferred Stock"], dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series M Preferred Stock, at an annual rate of % on the per share liquidation preference of the Series M Preferred Stock. [For fixed-to-floating rate selection: From the later 15, [____] and (ii) the date of issuance of the Series M Preferred Stock, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding

share of Series M Preferred Stock, at an annual rate on the per share liquidation preference of the Series M Preferred Stock equal to [the greater of (x)] 3-Month USD LIBOR for the related

for any Dividend Period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period

thereafter dividends payable for any period greater or less than a full dividend period will be

% [or (y)

[For fixed-to-floating rate – if such Dividend Period ends in or prior to

_%)]]. Dividends payable

Dividend Period plus

___ percent (

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computed on the basis of the actual number of days in the relevant period divided by 360.] No interest will be paid on any dividend payment of the Series M Preferred Stock.

- (d) Dividends on the Series M Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series M Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series M Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series M Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.
- (e) If full dividends on all outstanding shares of the Series M Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. Liquidation.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series M Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series M Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series M Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series M Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series M Preferred Stock and the corresponding amounts payable on any other Securities of equal ranking, the holders of Series M Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.
- Section 6. <u>Maturity</u>. The Series M Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

(a) The Series M Preferred Stock shall not be redeemable at the option of the holders at any time.

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(b) The Ser Company in any of the following		erred Stock shall be redeemable at the option of the tances:
	on the occu	t not in part, prior to the Dividend Payment Date in irrence of a Regulatory Capital Event or a Rating e equal to the sum of:
((A) the	greater of:
and	(1)	\$1,000,000 per share of Series M Preferred Stock
		The sum of the present value of \$1,000,000 per unted from the Dividend Payment Date inesent values of all undeclared dividends for each
Dividend Period from the rede , [2017] discourredemption date, in each case	mption datented from to a quarter to a quart	e to and including the Dividend Payment Date in heir applicable Dividend Payment Dates to the terly basis (assuming a 360-day year consisting of ate, as calculated by an Independent Investment
((B) any	declared but unpaid dividends to the redemption date;
the Dividend Payment Date in		t not in part, on any Dividend Payment Date prior to, [2017] for any reason other than the a Regulatory Capital Event, at a cash redemption price
((A) the	greater of:
or	(1)	\$1,000,000 per share of Series M Preferred Stock,
[2017] to the redemption date, Dividend Periods from the redemption date, in each case	and the pr emption da nted from the on a quart	the sum of the present value of \$1,000,000 per inted from the Dividend Payment Date in, esent values of all undeclared dividends for the te to and including the Dividend Payment Date in heir applicable Dividend Payment Dates to the erly basis (assuming a 360-day year consisting of ate, as calculated by an Independent Investment
(B) any	declared but unpaid dividends to the redemption date;
Dividend Payment Date in occurrence of a Regulatory Ca	apital Event of Series I	t not in part, on any Dividend Payment Date after the , [2017] that is not a [Ten-Year Date], upon the or a Rating Agency Event, at a cash redemption price If Preferred Stock, <i>plus</i> any declared and unpaid

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(iv) in whole or in part, on each Dividend Payment Date that is a [Ten-Year Date], at a cash redemption price of \$1,000,000 per share of Series M Preferred Stock, plus any declared and unpaid dividends to the redemption date; and		
Dividend Payment Dat	occurr	in whole but not in part, on any Dividend Payment Date after the, [2017] that is not a [Ten-Year Date] for any ence of a Rating Agency Event or a Regulatory Capital Event, at a to:

(A) the greater of:

(1) \$1,000,000 per share of Series M Preferred Stock,

or

- (2) the sum of the present value of \$1,000,000 per share of Series M Preferred Stock, discounted from the next succeeding [Ten-Year Date] to the redemption date, and the present values of all undeclared dividends for the Dividend Periods from the redemption date to and including the next succeeding [Ten-Year Date], discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the 3-month USD LIBOR Rate applicable to the Dividend Period immediately preceding such redemption date (which 3-month USD LIBOR Rate will also, for the purposes of calculating such redemption price, be the rate used in calculating the amount for each undeclared dividend), as calculated by an Independent Investment Banker; plus
 - (B) any declared but unpaid dividends to the redemption date:

in each case, without accumulation of any undeclared dividends with respect to Dividend Payment Dates prior to the redemption date.

- (c) Dividends will cease to accrue on the Series M Preferred Stock called for redemption on and as of the date fixed for redemption and such Series M Preferred Stock will be deemed to cease to be outstanding, *provided* that the redemption price, including any authorized and declared but unpaid dividends for the current Dividend Period, if any, to the date fixed for redemption, has been duly paid or provision has been made for such payment.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series M Preferred Stock, not less than thirty nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series M Preferred Stock. The notice of redemption shall include a statement of (i) the redemption date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series M Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series M Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series M Preferred Stock accordingly.

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Section 8. <u>Voting Rights</u>.

- (a) Holders of the Series M Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in this Section 8.
- (b) Holders of the Series M Preferred Stock will in the circumstances to the extent set forth in this Section 8(b), have the right to elect two directors.
- (i) If after the issuance of the Series M Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series M Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series M Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends in full on the Series M Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series M Preferred Stock.
- (ii) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at such time as the Company pays dividends in full on the Series M Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series M Preferred Stock. After the term of such additional directors terminates, the holders of the Series M Preferred Stock will not be entitled to elect additional directors unless full dividends on the Series M Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.
- (iii) Any additional director elected by the holders of the Series M Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series M Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. Any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series M Preferred Stock and Voting Parity Securities, voting together as a single and separate class.
- (c) So long as any shares of Series M Preferred Stock are outstanding, the vote or consent of the holders of at least 66 2/3% of the shares of Series M Preferred Stock at the time outstanding, voting as a class with all other classes and series of Parity Securities upon which like voting rights have been conferred and are exercisable, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Washington law:

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- (i) any amendment, alteration or repeal of any provision of the Company's Amended and Restated Articles of Incorporation (including the Articles of Amendment creating the Series M Preferred Stock) or the Company's bylaws that would alter or change the voting powers, preferences or special rights of the Series M Preferred Stock so as to affect them adversely;
- (ii) any amendment or alteration of the Company's Amended and Restated Articles of Incorporation to authorize or create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Company's capital stock ranking prior to the Series M Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Company; or
- (iii) the consummation of a binding share exchange or reclassification involving the Series M Preferred Stock or a merger or consolidation of the Company with another entity, except that holders of Series M Preferred Stock will have no right to vote under this provision or under §23B.11.035 of the Revised Code of Washington or otherwise under Washington law if in each case (x) the Series M Preferred Stock remains outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such Series M Preferred Stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series M Preferred Stock, taken as a whole;

provided, however, that any increase in the amount of the authorized or issued Series M Preferred Stock or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock ranking equally with and/or junior to the Series M Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Company's liquidation, dissolution or winding up will not be deemed to adversely affect the voting powers, preferences or special rights of the Series M Preferred stock and, notwithstanding §23B.10.040(1)(a), (e) or (f) of the Revised Code of Washington or any other provision of Washington law, holders of Series M Preferred Stock will have no right to vote on such an increase, creation or issuance.

- (d) If an amendment, alteration, repeal, share exchange, reclassification, merger or consolidation described above would adversely affect one or more but not all series of preferred stock with like voting rights (including the Series M Preferred Stock for this purpose), then only the series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.
- Section 9. <u>Certificates</u>. The Company may at its option issue the Series M Preferred Stock without certificates.

RESOLVED FURTHER, that for purposes of these resolutions and the transactions contemplated hereby, each of the following shall be an "Authorized Officer": (i) the Chief Executive Officer, (ii) the Chief Operating Officer, (iii) the Chief Financial Officer, (iv) any Senior Executive Vice President, (v) the Executive Vice President – Corporate Strategy & Development, (vi) the Senior Vice President and Treasurer, (vii) any Senior Vice President

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reporting directly to the Senior Vice President and Treasurer and (viii) the Senior Vice President and Controller;

RESOLVED FURTHER, that the Board hereby authorizes, and delegates the authority to, any one of the Authorized Officers to designate, finalize, determine and complete the preferences, limitations, voting powers and relative rights of the Series M Preferred Stock, subject to the limits specified in these resolutions;

RESOLVED FURTHER, that the authorization and delegation in the immediately preceding resolutions shall include, without limitation, the authority to determine the number of shares of the Series M Preferred Stock to be authorized, to determine the dividend rates and whether such rates are fixed or fixed-to-floating, to determine the liquidation amount, to designate situations in which the Company has the option to redeem the Series M Preferred Stock with or without make-whole provisions (including without limitation changing references to "10-Year Date" to a shorter time period), to designate circumstances involving amendments to the Company's articles of incorporation as amended or involving mergers or other combinations or similar events in which holders of Series M shall have voting rights, to approve the form of any stock certificate and to prepare and authorize the filing of articles of amendment for the Series M Preferred Stock with the Secretary of State of the State of Washington; provided. however, that (i) the number of shares of Series M Preferred Stock authorized shall not exceed 1,000, (ii) the liquidation preferences shall not exceed \$1,000,000 per share. (iii) the dividend rate will be at a fixed rate not to exceed 9.00% per annum from the date of the issuance and, in the case of a fixed-to-floating rate election, after a date which is approximately either 5 or 10 years from the date of issuance of the LLC Preferred Interests, as provided in the completed Designation and thereafter will be at a floating rate equal to the 3-month LIBOR applicable to such period plus a spread which will not exceed 300 basis points, except that such floating rate may be subject each dividend period to a floor which shall not exceed 4.00% per annum, and (iv) the Company will have the right to redeem the Series M Preferred Stock on a date that occurs no later than the first dividend payment date which is more than 10 years after the date on which the LLC Preferred Interests and the SPE Securities are issued:

RESOLVED FURTHER, that the Series M Preferred Stock may be issued to a depositary, which shall issue depositary shares each representing a fractional interest in the shares of a series of the Series M Preferred Stock;

RESOLVED FURTHER, that the Company is hereby authorized to enter into and perform its obligations under a deposit agreement to issue depositary shares, and any Authorized Officer is authorized to select the depositary and to negotiate, execute and deliver such deposit agreement on behalf of the Company;

RESOLVED FURTHER, that the number of shares authorized in the Designation as completed by an Authorized Officer as provided in these resolutions shall upon filing of the articles of amendment for the Series M Preferred Stock be fully reserved for issuance;

RESOLVED FURTHER, that the Authorized Officers, or any of them, are authorized and empowered, on behalf of the Company and in its name, with full power and authority to delegate such authority to one or more attorneys-in-fact or agents acting for such Authorized Officers, or any of them, pursuant to a power of attorney, in the event that it is deemed necessary or desirable so to do, in connection with the offering of the Preferred Stock, the LLC Preferred Interests or the SPE Securities in a private offering and/or in an offering effected in reliance on Regulation S promulgated under the Securities Act of 1933, as amended (the

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"Securities Act"), to prepare, or cause to be prepared, an offering circular or offering memorandum with respect to such securities (and any supplements or amendments thereto), as the Authorized Officers, or any of them, taking such action shall approve in connection therewith in order to effect the offering of such securities in a private offering;

RESOLVED FURTHER, that after filing with the Secretary of State of the State of Washington the respective articles of amendment designating the terms of the Series M Preferred Stock, the Company's Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, the Company's Series J Series Perpetual Non-cumulative Fixed Rate Preferred Stock or the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, but prior to the issuance of the shares of the respective series, the authority of each of the Authorized Officer to execute and file an amendment to each such articles of amendment is hereby authorized, approved and confirmed, provided that any such filing shall be made only in order to make technical, clarifying or similar corrections or modifications and provided further that such corrections or modifications are consistent with the limitations previously established in the prior board resolutions authorizing such series and with the description of such series in the offering circular relating to such series; and

RESOLVED FURTHER, that any Authorized Officer, together with other proper officers of the Company (including, without limitation, those authorized from time to time pursuant to the Company's Asset and Liability Management Policy and the standards and procedures from time to time in effect thereunder), is hereby authorized to negotiate, enter into, execute and deliver any and all additional agreements (which agreements may include, without limitation, (i) purchase agreements with Goldman Sachs & Co. or an affiliate and/or other institutional purchasers, (ii) exchange agreements relating to the exchange of the LLC Preferred Interests and the SPE Securities into the Series M Preferred Stock, and (iii) declaration of covenants or other agreements, in favor of holders of SPE Securities and/or specified indebtedness of the Company, prohibiting the issuance by the Company of preferred stock senior to the Series M Preferred Stock, restricting sources of funds used to redeem the SPE Securities, or restricting dividends and distributions on the Company's stock if dividends are not paid on the SPE Securities), any undertakings or other documents or supplemental agreements on behalf of the Company (including, without limitation, filings or applications with banking regulators, securities regulators or stock exchanges, domestic or foreign) and to take any other actions, in each case, as such Authorized Officer or other proper officer deems to be necessary or advisable in connection with the issuance of the Series M Preferred Stock, the LLC Preferred Interests or the SPE Securities or to further the intent of these resolutions, subject to the limits set forth in these resolutions.

Ex. 1D

WASHINGTON MUTUAL, INC.

Board of Directors Resolutions (Series N Preferred Stock)

WHEREAS, Washington Mutual, Inc. (the "Company") indirectly owns all of the issued and outstanding common stock of University Street, Inc. ("University Street");

WHEREAS, Washington Mutual Preferred Funding LLC, a Delaware limited liability company ("WMPF LLC"), is a subsidiary of University Street:

WHEREAS, WMPF LLC previously issued preferred membership interests to Washington Mutual Bank ("WMB"), in exchange for transfers of mortgage loan assets;

WHEREAS, it is proposed that WMPF LLC will issue to University Street, to a special purpose entity (the "SPE") and/or to WMB a new series or class of preferred interests (the "LLC Preferred Interests") which LLC Preferred Interests in the aggregate will not exceed \$1.5 billion:

WHEREAS, if LLC Preferred Interests are issued to University Street, then University Street will, in turn, transfer or sell the LLC Preferred Interests to the SPE and if WMPF LLC interests are issued to WMB, then WMB will, in turn, transfer or sell the LLC Preferred interests to the SPE;

WHEREAS, upon or concurrently with receipt of the LLC Preferred Interests, the SPE will, in turn, issue substantially similar securities (the "SPE Securities") to investors for cash;

WHEREAS, under specified circumstances, the SPE Securities will automatically be exchanged for depositary shares representing fractional interests in shares of a new series of preferred stock of the Company; and

WHEREAS, the Board desires to authorize the issuance of such new series of such preferred stock, to establish substantive terms or limits of such series, to delegate authority to appropriate officers of the Company to determine, within the limits specifically prescribed in these resolutions, the designation and relative rights, voting powers, preferences and limitations of such series and to provide for other matters relating to the preferred stock and the LLC Preferred Interests.

THEREFORE, IT IS HEREBY RESOLVED, that there is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock which, unless an Authorized Officer determines that such series should bear a fixed-to-floating dividend rate or a floating dividend rate, shall be designated as the "Series N Perpetual Non-cumulative Fixed Rate Preferred Stock" (the "Series N Preferred Stock"). The number of shares constituting such series shall not exceed 1,500. The stock in such series shall have no par value.

FURTHER RESOLVED, that the Series N Preferred Stock shall have preferences, limitations, voting powers and relative rights set forth below, subject to completion or modification by the Authorized Officers as provided herein:

DESIGNATION

Section 1. Des	signation. There is l	hereby created ou	t of the authorized and ι	unissued
shares of preferred stock	of the Company a s	eries of preferred	stock designated as the	"Series
N Perpetual Non-cumulat	ive Fixed Rate Prefe	erred Stock" (the "	Series N Preferred Stoc	k"). The
number of shares constitu	iting such series sha	all be	The Series N Prefe	erred
Stock shall have no par va	alue per share and t	he liquidation pref	ference of the Series N I	Preferred
Stock shall be \$1,000,000	.00 per share. Sha	res of the Series I	N Preferred Stock shall b	e issued
if and only if a Conditional	Exchange occurs.	•	e.	

Section 2. Ranking.

The Series N Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock"), the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), the Company's Series K Perpetual Non-Cumulative Floating Rate Preferred Stock (the "Series K Preferred Stock"), the Company's Series L Perpetual Noncumulative Fixed-to-Floating Rate Preferred Stock (the "Series L Preferred Stock"), the Company's Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the Series M Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series N Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with or senior to the Series N Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company, including the Common Stock (collectively referred to as "Junior Securities"). The Company shall have the right to authorize and/or issue additional shares or series of Junior Securities and Parity Securities without the consent of the holders of the Series N Preferred Stock.

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- (a) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (b) "Common Stock" has the meaning set forth in Section 2.
 - (c) "Company" means Washington Mutual, Inc., a Washington corporation.
- (d) "Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in ______, [2012] that would be utilized, at the time of

selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series N Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.

- (e) "Comparable Treasury Price" means with respect to any Redemption Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.
- (f) "Conditional Exchange" means the automatic exchange of the Trust Securities into depositary shares representing an interest in the Series N Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
- (g) "<u>Delaware Preferred Securities</u>" means the ____% Perpetual Non-cumulative Preferred Securities, Series 2007-B, liquidation preference \$1,000 per security, issued or to be issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
 - (h) "Designation Date" means ______, 2007.
 - (i) "<u>Dividend Payment Date</u>" has the meaning set forth in Section 4(b).
 - (j) "Dividend Period" has the meaning set forth in Section 4(b).
- (k) "Exchange Event" means the occurrence of any one of the following at a time as the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Trust Securities into depositary shares representing an interest in the Series N Preferred Stock in anticipation of WMB becoming undercapitalized under the Prompt Corrective Action Regulations or of the OTS taking any supervisory action that limits the payment of dividends by WMB.
- (i) <u>"Independent Investment Banker"</u> means an independent investment banking institution of national standing appointed by the Company.
 - (m) "Junior Securities" has the meaning set forth in Section 2.
- (n) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (o) "Parity Securities" has the meaning set forth in Section 2.
 - (p) "Primary Treasury Dealer" has the meaning set forth in Section 3(u).

- (q) "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation.
- (r) "Rating Agencies" means, at any time, Standard & Poor's Rating Services, a Division of the McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc., but only in the case of each such agency if it is rating the relevant security, including the Delaware Preferred Securities at the relevant time or, if none of them is providing a rating for the relevant security, including the Delaware Preferred Securities at such time, then any "nationally recognized statistical rating organization" as that phrase is defined for purposes of Rule 436(g)(2) under the Securities Act of 1933, as amended, which is rating such relevant security.
- (s) A "Rating Agency Event" occurs when the Company reasonably determines that an amendment, clarification or change has occurred in the equity criteria for securities such as the Delaware Preferred Securities of any Rating Agency that then publishes a rating for the Company which amendment, clarification or change results in a lower equity credit for the Company than the respective equity credit assigned by such Rating Agency to the Delaware Preferred Securities on the Designation Date.
- (t) "<u>Redemption Date</u>" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (u) "<u>Reference Treasury Dealer</u>" means each of the three primary U.S. government securities dealers (each, a "<u>Primary Treasury Dealer</u>"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (v) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (w) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Delaware Preferred Securities.
 - (x) "Series I Preferred Stock" has the meaning set forth in Section 2.
 - (y) "Series J Preferred Stock" has the meaning set forth in Section 2.
 - (z) "Series K Preferred Stock" has the meaning set forth in Section 2.
 - (aa) "Series L Preferred Stock" has the meaning set forth in Section 2.

- (bb) "Series M Preferred Stock" has the meaning set forth in Section 2.
- (cc) "Series N Preferred Stock" has the meaning set forth in Section 1.
- (dd) "<u>Treasury Rate</u>" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (ee) "<u>Trust Securities</u>" means the ____% Perpetual Non-cumulative Trust Securities, liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust IV, a Delaware statutory trust.
 - (ff) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (gg) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. Dividends.

- (a) Holders of shares of Series N Preferred Stock shall be entitled to receive, if, when and as declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series N Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series N Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period".
- (c) After issuance of the Series N Preferred Stock, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series N Preferred Stock, at an annual rate of ______% on the per share liquidation preference of the Series N Preferred Stock. Dividends payable for any Dividend Period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period. No interest will be paid on any dividend payment of the Series N Preferred Stock.
- (d) Dividends on the Series N Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series N Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series N Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full

dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series N Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.

(e) If full dividends on all outstanding shares of the Series N Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. Liquidation.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series N Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series N Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series N Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series N Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series N Preferred Stock and the corresponding amounts payable on any other Securities of equal ranking, the holders of Series N Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.
- Section 6. <u>Maturity</u>. The Series N Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series N Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series N Preferred Stock shall be redeemable at the option of the Company in any of the following circumstances:
- (i) in whole but not in part, on any Dividend Payment Date prior to the Dividend Payment Date in _______, [2012] upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to the sum of:

	(A)	the gre	eater of:
and		(1)	\$1,000,000 per share of Series N Preferred Stock
[2012] to the Redemption Da Dividend Period from the Re , [2012] disco Redemption Date, in each ca	ate, and demptio ounted fr ase on a e Treasu	iscounte the pre- n Date om thei quarte	The sum of the present value of \$1,000,000 per ed from the Dividend Payment Date in sent values of all undeclared dividends for each to and including the Dividend Payment Date in applicable Dividend Payment Dates to the rly basis (assuming a 360-day year consisting of a scalculated by an Independent Investment
Date;	(B)	any de	clared but unpaid dividends to the Redemption
or			
Dividend Payment Date in _		, [part, on any Dividend Payment Date on or after the 2012], at a cash redemption price equal to Stock, <i>plus</i> any declared and unpaid dividends to
In each case, without accum Payment Date prior to the Re			ndeclared dividends with respect to Dividend
(c) Divide	nds will	cease t	o accrue on the Series N Preferred Stock called for

- redemption on and as of the date fixed for redemption and such Series N Preferred Stock will be deemed to cease to be outstanding, *provided* that the redemption price, including any authorized and declared but unpaid dividends for the current Dividend Period, if any, to the date fixed for redemption, has been duly paid or provision has been made for such payment.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series N Preferred Stock, not less than 30 nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series N Preferred Stock. The notice of redemption shall include a statement of (i) the Redemption Date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series N Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series N Preferred Stock. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series N Preferred Stock accordingly.

Section 8. Voting Rights.

- (a) Holders of the Series N Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in this Section 8.
- (b) Holders of the Series N Preferred Stock will in the circumstances to the extent set forth in this Section 8(b), have the right to elect two directors.
- (i) If after the issuance of the Series N Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series N Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series N Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends in full on the Series N Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series N Preferred Stock.
- (ii) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at such time as the Company pays dividends in full on the Series N Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series N Preferred Stock. After the term of such additional directors terminates, the holders of the Series N Preferred Stock will not be entitled to elect additional directors unless full dividends on the Series N Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.
- (iii) Any additional director elected by the holders of the Series N Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series N Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. Any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series N Preferred Stock and Voting Parity Securities, voting together as a single and separate class.
- (c) So long as any shares of Series N Preferred Stock are outstanding, the vote or consent of the holders of at least 66 2/3% of the shares of Series N Preferred Stock at the time outstanding, voting as a class with all other classes and series of Parity Securities upon which like voting rights have been conferred and are exercisable, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Washington law:

- (i) any amendment, alteration or repeal of any provision of the Company's Amended and Restated Articles of Incorporation (including the Articles of Amendment creating the Series N Preferred Stock) or the Company's bylaws that would alter or change the voting powers, preferences or special rights of the Series N Preferred Stock so as to affect them adversely;
- (ii) any amendment or alteration of the Company's Amended and Restated Articles of Incorporation to authorize or create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Company's capital stock ranking prior to the Series N Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Company; or
- (iii) the consummation of a binding share exchange or reclassification involving the Series N Preferred Stock or a merger or consolidation of the Company with another entity, except that holders of Series N Preferred Stock will have no right to vote under this provision or under §23B.11.035 of the Revised Code of Washington or otherwise under Washington law if in each case (x) the Series N Preferred Stock remains outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such Series N Preferred Stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series N Preferred Stock, taken as a whole;

provided, however, that any increase in the amount of the authorized or issued Series N Preferred Stock or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock ranking equally with and/or junior to the Series N Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Company's liquidation, dissolution or winding up will not be deemed to adversely affect the voting powers, preferences or special rights of the Series N Preferred stock and, notwithstanding §23B.10.040(1)(a), (e) or (f) of the Revised Code of Washington or any other provision of Washington law, holders of Series N Preferred Stock will have no right to vote on such an increase, creation or issuance.

- (d) If an amendment, alteration, repeal, share exchange, reclassification, merger or consolidation described above would adversely affect one or more but not all series of preferred stock with like voting rights (including the Series N Preferred Stock for this purpose), then only the series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.
- Section 9. <u>Certificates</u>. The Company may at its option issue the Series N Preferred Stock without certificates.

RESOLVED FURTHER, that for purposes of these resolutions and the transactions contemplated hereby, each of the following shall be an "Authorized Officer": (i) the Chief Executive Officer, (ii) the Chief Operating Officer, (iii) the Chief Financial Officer, (iv) any Senior Executive Vice President, (v) the Executive Vice President – Corporate Strategy & Development, (vi) the Senior Vice President and Treasurer, (vii) any Senior Vice President

reporting directly to the Senior Vice President and Treasurer and (viii) the Senior Vice President and Controller.

RESOLVED FURTHER, that the Board hereby authorizes, and delegates the authority to, any one of the Authorized Officers to designate, finalize, determine and complete (it being understood that this authority includes without limitation making appropriate modifications of the preceding designation) the preferences, limitations, voting powers and relative rights of the Series N Preferred Stock, subject to the limits specified in these resolutions;

RESOLVED FURTHER, that the authorization and delegation in the immediately preceding resolutions shall include, without limitation, the authority to determine the number of shares of the Series N Preferred Stock to be authorized, to determine the dividend rates and whether such rates are fixed, fixed-to-floating or floating (and to make appropriate modifications in other provisions to reflect such rates), to determine the liquidation amount, to designate situations in which the Company has the option to redeem the Series N Preferred Stock with or without make-whole provisions (including without limitation the terms of such make-whole provisions), to designate circumstances involving amendments to the Company's articles of incorporation as amended or involving mergers or other combinations or similar events in which holders of Series N Preferred Stock shall have voting rights, to approve the form of any stock certificate and to prepare and authorize the filing of articles of amendment for the Series N Preferred Stock with the Secretary of State of the State of Washington; provided, however, that (i) the number of shares of Series N Preferred Stock authorized shall not exceed 1,500, (ii) the liquidation preferences shall not exceed \$1,000,000 per share, (iii) the dividend rate will be at a fixed rate not to exceed 11.0% per annum from the date of the issuance and, in the case of a fixed-to-floating rate election (upon the time the floating rate applies) or a floating rate election, will be at a floating rate equal to the relevant LIBOR applicable to such period plus a spread which will not exceed 600 basis points, and (iv) the Company will have the right to redeem the Series N Preferred Stock on a date that occurs no later than the first dividend payment date which is more than 10 years after the date on which the LLC Preferred Interests and the SPE Securities are issued.

RESOLVED FURTHER, that the Series N Preferred Stock may be issued to a depositary, which shall issue depositary shares each representing a fractional interest in the shares of a series of the Series N Preferred Stock;

RESOLVED FURTHER, that the Company is hereby authorized to enter into and perform its obligations under a deposit agreement to issue depositary shares, and any Authorized Officer is authorized to select the depositary and to negotiate, execute and deliver such deposit agreement on behalf of the Company;

RESOLVED FURTHER, that the number of shares authorized in the Designation as completed by an Authorized Officer as provided in these resolutions shall upon filing of the articles of amendment for the Series N Preferred Stock be fully reserved for issuance;

RESOLVED FURTHER, that the Authorized Officers, or any of them, are authorized and empowered, on behalf of the Company and in its name, with full power and authority to delegate such authority to one or more attorneys-in-fact or agents acting for such Authorized Officers, or any of them, pursuant to a power of attorney, in the event that it is deemed necessary or desirable so to do, in connection with the offering of the Preferred Stock, the LLC Preferred Interests or the SPE Securities in a private offering and/or in an offering effected in reliance on Regulation S promulgated under the Securities Act of 1933, as amended (the "Securities Act"),

to prepare, or cause to be prepared, an offering circular or offering memorandum with respect to such securities (and any supplements or amendments thereto), as the Authorized Officers, or any of them, taking such action shall approve in connection therewith in order to effect the offering of such securities in a private offering;

RESOLVED FURTHER, that after filing with the Secretary of State of the State of Washington the articles of amendment designating the terms of the Series N Preferred Stock, but prior to the issuance of the shares of the series, the authority of each of the Authorized Officer to execute and file an amendment to the articles of amendment is hereby authorized, approved and confirmed, provided that any such filing shall be made only in order to make technical, clarifying or similar corrections or modifications and provided further that such corrections or modifications are consistent with the limitations established in these board resolutions and with the description of the series in the offering circular;

RESOLVED FURTHER, that any Authorized Officer, together with other proper officers of the Company (including, without limitation, those authorized from time to time pursuant to the Company's Asset and Liability Management Policy and the standards and procedures from time to time in effect thereunder), is hereby authorized to negotiate, enter into, execute and deliver any and all additional agreements (which agreements may include, without limitation, (i) purchase agreements with Goldman Sachs & Co. or an affiliate and/or other institutional purchasers, (ii) exchange agreements relating to the exchange of the LLC Preferred Interests and the SPE Securities into depositary shares representing interests in the Series N Preferred Stock, and (iii) declaration of covenants or other agreements, in favor of holders of SPE Securities and/or specified indebtedness of the Company, prohibiting the issuance by the Company of preferred stock senior to the Series N Preferred Stock, restricting sources of funds used to redeem the SPE Securities, or restricting dividends and distributions on the Company's stock if dividends are not paid on the SPE Securities), any undertakings or other documents or supplemental agreements on behalf of the Company (including, without limitation, filings or applications with banking regulators, securities regulators or stock exchanges, domestic or foreign) and to take any other actions, in each case, as such Authorized Officer or other proper officer deems to be necessary or advisable in connection with the issuance of the Series N Preferred Stock, the LLC Preferred Interests or the SPE Securities or to further the intent of these resolutions, subject to the limits set forth in these resolutions; and

RESOLVED FURTHER, that any actions taken by any of the Authorized Officers or any other proper officer of the Company prior to the adoption of these resolutions that is otherwise within the scope of the authority conferred by these resolutions is hereby ratified, confirmed and approved.

WASHINGTON MUTUAL, INC.

Board of Directors Resolutions (Series N Preferred Stock – Supplemental Resolutions)

WHEREAS, at a meeting of the Board of Directors (the "Board") of Washington Mutual, Inc. (the "Company") duly called and held on August 21, 2007, the Board adopted resolutions (the "Original Resolutions") relating to and authorizing the creation out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock initially designated as the "Series N Perpetual Non-cumulative Fixed Rate Preferred Stock" (the "Series N Preferred Stock");

WHEREAS, the Original Resolutions also, among other matters, delegated authority to appropriate officers of the Company to determine, complete and modify, within the limits specifically prescribed in the Original Resolutions, the designation, relative rights, voting powers, preferences and limitations of the Series N Preferred Stock;

WHEREAS, the Board is contemplating the authorization of additional series of preferred stock of the Company whose designation will include the term "Series O" (the "Series O Preferred Stock"); and

WHEREAS, the Board now desires, because of recent changes in capital market conditions, to adjust certain of the limits in the Original Resolutions.

THEREFORE, IT IS HEREBY RESOLVED, that notwithstanding anything to the contrary contained in the Original Resolutions, the Authorized Officers (as that term is defined in the Original Resolutions), and any one of them acting alone, shall have the authority to determine the dividend rate of the Series N Preferred Stock and the number of shares of the Series N Preferred Stock, provided that (i) the dividend rate will be at a fixed rate not to exceed 13.0% per annum from the date of the issuance and, in the case of a fixed-to-floating rate election (upon the time the floating rate applies) or a floating rate election, will be at a floating rate equal to the relevant LIBOR applicable to such period plus a spread which will not exceed 800 basis points and (ii) the number of authorized shares of Series N Preferred Stock shall not exceed 2,000 and, in addition, the sum of the number of authorized shares of Series N Preferred Stock and the number of authorized shares of Series O Preferred Stock shall not exceed 2,000; and

RESOLVED FURTHER, that except as set forth herein, the Original Resolutions and all of the other terms, limits, delegations of authority and other conditions with respect to the Series N Preferred Stock set forth therein shall remain in full force and effect and are hereby ratified and confirmed in all respects.

Ex. 2A

ARTICLES OF AMENDMENT

OF

SECRETARY OF STATE MAR 0 6 2006 STATE OF WASHINGTON

WASHINGTON MUTUAL, INC.

(Series I Perpetual Non-cumulative Fixed-to-Floating Preferred Stock)

Pursuant to the provisions of Chapter 23B.10 and Section 23B.06.020 of the Revised Code of Washington, the undersigned officer of Washington Mutual, Inc. (the "Company"), a corporation organized and existing under the laws of the State of Washington, does hereby submit for filing these Articles of Amendment to its Amended and Restated Articles of Incorporation:

FIRST:

The name of the Company is Washington Mutual, Inc.

SECOND: 1,250 shares of the authorized Preferred Stock of the Company are hereby designated "Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock."

The rights, preferences, privileges, restrictions and other matters relating to the Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock are as follows:

Section 1. <u>Designation</u>. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" (the "Series I Preferred Stock"). The number of shares constituting such series shall be 1,250. The Series I Preferred Stock shall have no par value per share and the liquidation preference of the Series I Preferred Stock shall be \$1,000,000.00 per share. Shares of Series I Preferred Stock shall be issued if and only if a Conditional Exchange occurs.

Section 2. Ranking.

The Series I Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series I Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with the Series I Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company, including the Common Stock (collectively referred to as "Junior Securities").

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- "3-Month USD LIBOR" means, with respect to any Dividend Period, a rate determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, the Company or an affiliate of the Company on behalf of the Company will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Company to provide the Company with a quotation of the rate at which three-month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Company. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates guoted as of approximately 11:00 am., New York time, on the first day of such Dividend Period by three major banks in New York City, New York selected by the Company for loans in U.S. dollars to leading European banks, for a three-month period commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.
- (b) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (c) "Common Stock" has the meaning set forth in Section 2.
- (d) "<u>Company</u>" means Washington Mutual, Inc., a Washington corporation.
- (e) "Comparable Treasury Issue" means the United Sates Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in March, 2011 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series I Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.
- (f) "Comparable Treasury Price" means with respect to any Redemption Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.

- (g) "Conditional Exchange" means the automatic exchange of the WAMU Common Securities into depositary shares representing an interest in the Series I Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
- (h) "Delaware Preferred Securities" means the Fixed-to-Floating Rate Delaware Preferred Securities, together with the 7.25% Perpetual Non-cumulative Preferred Securities, liquidation preference \$1,000 per security, issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
 - (i) "Designation Date" means March 6, 2006.
 - (j) "Dividend Payment Date" has the meaning set forth in Section 4(b).
 - (k) "Dividend Period" has the meaning set forth in Section 4(b).
- (I) "Exchange Event" means the occurrence of any one of the following at a time as the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Fixed-to-Floating Rate Delaware Preferred Stock into the Series I Preferred Stock in anticipation of WMB becoming undercapitalized under the Prempt Corrective Action Regulations or of the OTS taking any supervisory action that limits the payment of dividends by WMB.
- (m) "Fixed-to-Floating Rate Delaware Preferred Securities" means the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, liquidation preference \$1,000 per security, issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
- (n) <u>Independent Investment Banker</u>" means an independent investment banking institution of national standing appointed by the Company.
- (o) "Junior Securities" has the meaning set forth in Section 2.
- (p) "<u>LIBOR Business Day</u>" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.
- (q) "LIBOR Determination Date" means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.
- (r) "<u>US LIBOR Telerate Page 3750</u>" means the display page of Moneyline's Telerate Service designated as 3750 (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to 3-Month USD LIBOR).

- (s) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (t) "Parity Securities" has the meaning set forth in Section 2.
 - (u) "Primary Treasury Dealer" has the meaning set forth in Section 3(x).
- (v) "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation.
- (w) "Redemption Date" means any of any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (x) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (y) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (z) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Fixed-to-Floating Rate Delaware Preferred Securities.
- (aa) "Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (bb) "Trust Securities" means the Fixed-to-Floating Rate Perpetual Noncumulative Trust Securities, Series A-1, liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust, a Delaware statutory trust.
 - (cc) "Voting Parity Securities" has the meaning set forth in Section 8(b).

(dd) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. Dividends.

- (a) Holders of shares of Series I Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series I Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series I Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period", except that, if the Series I Preferred Stock is outstanding on March 15, 2011, the Dividend Period ending in March 2011 shall be to but excluding March 15, 2011 (whether or not a Business Day) and the Dividend Period ending in June 2011 shall commence on March 15, 2011 (whether or not a Business Day).
- If the date of issuance of the Series I Preferred Stock is prior to the day immediately preceding March 15, 2011 or, if March 15, 2011 is not a Business Day, the first Business Day after March 15, 2011, then from such date of issuance to but not including March 15, 2011 (whether or not a Business Day), dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series I Preferred Stock, at an annual rate of 6.534% on the per share liquidation preference of the Series I Preferred Stock. From the later of the (i) March 15, 2011 and (ii) the date of issuance of the Series I Preferred Stock, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series I Preferred Stock, at an annual rate equal to 3-Month USD LIBOR for the related Dividend Period plus 1.4825% on the per share liquidation preference of the Series I Preferred Stock. Dividends payable for any Dividend Period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period if such Dividend Period ends in or prior to March 2011; thereafter dividends payable for any period greater or less than a full dividend period will be computed on the basis of the actual number of days in the relevant period divided by 360. No interest will be paid on any dividend payment of the Series I Preferred Stock.
- (d) Dividends in the Series I Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series I Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series I Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series I

Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.

(e) If full dividends on all outstanding shares of the Series J Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. Liquidation.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series I Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series I Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series I Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series I Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series I Preferred Stock and the corresponding amounts payable on any other Securities of equal ranking, the holders of Series I Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.
- Section 6. <u>Maturity</u>. The Series J Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series I Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series I Preferred Stock shall be redeemable at the option of the Company, in whole but not in part, prior to March 15, 2011 (or, in the event that March 15, 2011 is not a Business Day, the next Business Day), upon the occurrence of a Regulatory Capital Event at a cash redemption price equal to the sum of: (X) the greater of (i) \$1,000,000 per share, or (ii) the sum of present values of \$1,000,000 per share and all undeclared dividends for the Dividend Period from the Redemption Date to and including the Dividend Payment Date in March, 2011, discounted to the Redemption Date on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months)

at the Treasury Rate (as calculated by an Independent Investment Banker), plus 0.30%; and (Y) any declared but unpaid dividends to the Redemption Date.

- (c) The Series I Preferred Stock shall be redeemable in whole or in part at the option of the Company at any time, or from time to time, on or after March 15, 2011 (or, in the event that March 15, 2011 is not a Business Day, the next Business Day). Such redemption shall be at a cash redemption price of \$1,000,000 per share, plus any declared and unpaid dividends to the Redemption Date, without accumulation of any undeclared dividends.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series I Preferred Stock, not less than thirty nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series I Preferred Stock. The notice of redemption shall include a statement of (i) the redemption date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series I Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series I Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series I Preferred Stock accordingly.

Section 8. Voting Rights.

- (a) Holders of the Series I Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, or (ii) voting rights, if any, described in Section 8(b).
- (b) If after issuance of the Series I Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series I Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series I Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends or the Series I Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends for the fourth consecutive Dividend Period or its equivalent.
- (c) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at the first annual meeting of shareholders after the Company pays dividends for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends on the Series I

Preferred Stock and any Voting Parity Securities for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series I Preferred Stock. After the term of such additional directors terminates, the holders of the Series I Preferred Stock will not be able to elect additional directors unless dividends on the Series I Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.

(d) Any additional director elected by the holders of the Series I preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series I Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. As long as dividends on the Series I Preferred Stock or any Voting Parity Securities have not been paid for six Dividend Periods or their equivalent, any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series I Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at the same meeting at which such removal is considered.

Section 11. <u>Certificates</u>. The Company may at its option issue the Series I Preferred Stock without certificates.

THIRD: This amendment does not provide for an exchange, reclassification or cancellation of any issued shares.

FOURTH: The date of this amendment's adoption is March 6, 2006.

FIFTH: This amendment to the Amended and Restated Articles of Incorporation was duly adopted by the Board of Directors of the Company.

SIXTH: No shareholder action was required.

EXECUTED this 6 day of March, 2006.

WASHINGTON MUTUAL, INC.

Name: Robert J. Williams
Title: Senior Vice President and Treasurer

Ex. 2B

ARTICLES OF AMENDMENT

OF



WASHINGTON MUTUAL, INC.

(Series J Perpetual Non-cumulative Fixed Rate Preferred Stock)

Pursuant to the provisions of Chapter 23B.10 and Section 23B.06.020 of the Revised Code of Washington, the undersigned officer of Washington Mutual, Inc. (the "Company"), a corporation organized and existing under the laws of the State of Washington, does hereby submit for filing these Articles of Amendment to its Amended and Restated Articles of Incorporation:

FIRST:

The name of the Company is Washington Mutual, Inc.

SECOND: 750 shares of the authorized Preferred Stock of the Company are hereby designated "Series J Perpetual Non-cumulative Fixed Rate Preferred Stock."

The rights, preferences, privileges, restrictions and other matters relating to the Series J Perpetual Non-cumulative Fixed Rate Preferred Stock are as follows:

Section 1. <u>Designation</u>. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Series J Perpetual Non-cumulative Fixed Rate Preferred Stock" (the "Series J Preferred Stock"). The number of shares constituting such series shall be 750. The Series J Preferred Stock shall have no par value per share and the liquidation preference of the Series J Preferred Stock shall be \$1,000,000.00 per share. Shares of Series J Preferred Stock shall be issued if and only if a Conditional Exchange occurs.

Section 2. Ranking.

The Series J Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series I Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with the Series J Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company, including the Common Stock (collectively referred to as "Junior Securities").

Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:

- (a) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (b) "Common Stock" has the meaning set forth in Section 2.
- (c) "Company" means Washington Mutual, Inc., a Washington corporation.
- (d) "Comparable Treasury Issue" means the United Sates Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date on March 15, 2011 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series J Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.
- (e) "Comparable Treasury Price" means with respect to any Redemption Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.
- (f) "Conditional Exchange" means the automatic exchange of the WaMu Cayman Preferred Securities into depositary shares representing an interest in the Series J Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
- (g) "Delaware Preferred Securities" means the Fixed Rate Delaware Preferred Securities, together with the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, liquidation preference \$1,000 per security, issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
 - (h) "Designation Date" means March 6, 2006.
 - (i) "Dividend Payment Date" has the meaning set forth in Section 4(b).
 - (j) "<u>Dividend Period</u>" has the meaning set forth in Section 4(b).
- (k) "Exchange Event" means the occurrence of any one of the following at a time when the WaMu Cayman Preferred Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of WaMu Cayman Preferred Securities into the Series J Preferred Stock, in anticipation of WMB

becoming undercapitalized under the Prompt Corrective Action Regulations in the near term or of taking any supervisory action that limits the payment of dividends by WMB.

- (I) "Fixed Rate Delaware Preferred Securities" means the 7.25% Perpetual Non-cumulative Preferred Securities, liquidation preference \$1,000 per security, issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
- (m) "Independent Investment Banker" means an independent investment banking institution of national standing appointed by the Company.
 - (n) "Junior Securities" has the meaning set forth in Section 2.
- (o) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (p) "Parity Securities" has the meaning set forth in Section 2.
 - (q) "Primary Treasury Dealer" has the meaning set forth in Section 3(t).
- (r) "Prompt Corrective Action Regulations" means the regulations set forth in 12 C.F.R. Part 565 as in effect from time to time, or any successor regulations.
- (s) "Redemption Date" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (t) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (u) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (v) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Fixed Rate Delaware Preferred Securities.

- (w) "Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
 - (x) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (y) "WaMu Cayman Preferred Securities" means the 7.25% Perpetual Non-cumulative Preferred Securities, Series A-1, liquidation preference \$100,000 per security, and the 7.25% Perpetual Non-cumulative Preferred Securities, Series A-2, liquidation preference \$10,000 per security, issued by Washington Mutual Preferred Funding (Cayman) I Ltd., a Cayman Islands exempted company limited by shares.
- (z) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. Dividends.

- (a) Holders of shares of Series J Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series J Preferred Stock (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. If any Dividend Payment Date is not a Business Day, then dividends will be payable on the first Business Day following such Dividend Payment Date with the same force and effect as if payment were made on the Dividend Payment Dates. Each period from and including a Dividend Payment Date (or the date of issuance of the Series J Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as a "Dividend Period."
- (c) On a Dividend Payment Date, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series J Preferred Stock, at an annual rate of 7.25% on the per share liquidation preference of the Series J Preferred Stock. Dividends payable for any period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period. No interest will be paid on any dividend payment of the Series J Preferred Stock.
- (d) Dividends in the Series J Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series J Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series J Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to

pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series J Preferred Stock, the Common Stock or any other class or series of the Company's preferred stock.

(e) If full dividends on all outstanding shares of the Series J Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. Liquidation.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series J Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series J Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of liquidation, out of assets of the Company legally available for distribution to its shareholders, before any distribution of assets is made to holders of Common Stock or any securities ranking junior to the Series J Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series J Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series J Preferred Stock and the corresponding amounts payable on any other securities of equal ranking, the holders of Series J Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.
- Section 6. <u>Maturity</u>. The Series J Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series J Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series J Preferred Stock shall be redeemable at the option of the Company, in whole but not in part, prior to March 15, 2011, upon the occurrence of a Regulatory Capital Event at a cash redemption price equal to the sum of: (X) the greater of (i) \$1,000,000 per share, or (ii) the sum of present values of \$1,000,000 per share and all undeclared dividends for the Dividend Period from the Redemption Date to and including the Dividend Payment Date on March 15, 2011, discounted to the Redemption Date on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months)

at the Treasury Rate (as calculated by an Independent Investment Banker), plus 0.40%; and (Y) any declared but unpaid dividends to the Redemption Date.

- (c) The Series J Preferred Stock shall be redeemable in whole or in part at the option of the Company at any time, or from time to time, on or after March 15, 2011. Such redemption shall be at a cash redemption price of \$1,000,000 per share, plus any declared and unpaid dividends to the Redemption Date, without accumulation of any undeclared dividends.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series J Preferred Stock not less than thirty nor more than sixty days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series J Preferred Stock. The notice of redemption shall include a statement of (i) the Redemption Date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series J Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series J Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series J Preferred Stock accordingly.

Section 8. Voting Rights.

- (a) Holders of the Series J Preferred Stock will not have any voting rights, including the right to elect any directors, except for (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in Section 8(b).
- (b) If after issuance of the Series J Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series J Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series J Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends on the Series J Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends for the fourth consecutive Dividend Period or its equivalent.
- (c) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at the first annual meeting of shareholders after the Company pays dividends for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends on the Series J Preferred Stock and any Voting Parity Securities for the fourth consecutive Dividend

Period or its equivalent or, if earlier, upon the redemption of all Series J Preferred Stock. After the term of such additional directors terminates, the holders of the Series J Preferred Stock will not be able to elect additional directors unless dividends on the Series J Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.

(d) Any additional director elected by the holders of the Series J Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series J Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. As long as dividends on the Series J Preferred Stock or any Voting Parity Stock have not been paid for six Dividend Periods or their equivalent, any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series J Preferred Stock and any Voting Parity Securities, voting together as a single and separate class, at the same meeting at which such removal is considered.

Section 9. <u>No Conversion Rights</u>. The holders of Series J Preferred Stock do not have any rights to convert any such shares into shares of any other class or series of securities of the Company.

Section 10. <u>Certificates</u>. The Company may at its option issue the Series J Preferred Stock without certificates.

THIRD: This amendment does not provide for an exchange, reclassification or cancellation of any issued shares.

FOURTH: The date of this amendment's adoption is March 6, 2006.

FIFTH: This amendment to the Amended and Restated Articles of Incorporation was duly adopted by the Board of Directors of the Company.

SIXTH: No shareholder action was required.

EXECUTED this Uthan day of March, 2006.

WASHINGTON MUTUAL, INC.

Name: Robert J. Williams Title: Senior Vice President and Treasurer

Ex. 2C



Secretary of State

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

certificate that the attached is a true and correct copy of

ARTICLES OF AMENDMENT

of

WASHINGTON MUTUAL, INC.

as filed in this office on December 12, 2006.

Date: December 12, 2006



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Sam Reed, Secretary of State

FILED SECRETARY OF STATE

DEC 1 2 2006

STATE OF WASHINGTON

ARTICLES OF AMENDMENT

OF

601566389

WASHINGTON MUTUAL, INC.

(Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock)

Pursuant to the provisions of Chapter 23B.10 and Section 23B.06.020 of the Revised Code of Washington, the undersigned officer of Washington Mutual, Inc. (the "Company"), a corporation organized and existing under the laws of the State of Washington, does hereby submit for filing these Articles of Amendment to the Company's Amended and Restated Articles of Incorporation:

FIRST: The name of the Company is Washington Mutual, Inc.

SECOND: 500 shares of the authorized preferred stock of the Company are hereby designated "Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock".

The preferences, limitations, voting powers and relative rights of the Series L Perpetual Non-Cumulative Floating Rate Preferred Stock are as follows:

DESIGNATION

Designation. There is hereby created out of the authorized and unissued Section 1. shares of preferred stock of the Company a series of preferred stock designated as the "Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" (the "Series L Preferred Stock"). The number of shares constituting such series shall be 500. The Series L Preferred Stock shall have no par value per share and the liquidation preference of the Series L Preferred Stock shall be \$1,000,000.00 per share. Shares of Series L Preferred Stock shall be issued if and only if a Conditional Exchange occurs.

Section 2. Ranking.

The Series L Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock"), the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), the Company's Series K Perpetual Non-Cumulative Floating Rate Preferred Stock (the "Series K Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series L Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with or senior to the Series L Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company, including the Common Stock (collectively referred to as "Junior Securities"). The Company has the right

to authorize and/or issue additional shares or series of Junior Securities and Parity Securities without the consent of the holders of the Series L Preferred Stock.

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- "3-Month USD LIBOR" means, with respect to any Dividend Period, a rate (a) determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on US LIBOR Telerate Page 3750 as of approximately 11:00 a.m., London time, the Company or an affiliate of the Company on behalf of the Company will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Company to provide the Company with a quotation of the rate at which three-month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Company. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted as of approximately 11:00 am., New York time, on the first day of such Dividend Period by three major banks in New York City, New York selected by the Company for loans in U.S. dollars to leading European banks, for a three-month period commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.
- (b) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (c) "Common Stock" has the meaning set forth in Section 2.
 - (d) "Company" means Washington Mutual, Inc., a Washington corporation.
- (e) "Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in December 2016 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series L Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.
- (f) "Comparable Treasury Price" means with respect to any Redemption
 Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after
 excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the

Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.

- (g) "Conditional Exchange" means the automatic exchange of the Trust Securities into depositary shares representing an interest in the Series L Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
 - (h) "Designation Date" means December 13, 2006.
 - (i) "Dividend Payment Date" has the meaning set forth in Section 4(b).
 - (j) "<u>Dividend Period</u>" has the meaning set forth in Section 4(b).
- (k) "Exchange Event" means the occurrence of any one of the following at a time when the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Trust Securities into depositary shares representing an interest in the Series L Preferred Stock in anticipation of (A) WMB becoming undercapitalized under the Prompt Corrective Action Regulations or (B) the OTS taking any supervisory action that limits the payment of dividends by WMB.
- (I) "<u>Fixed-to-Floating Rate Delaware Preferred Securities</u>" means the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2006-C, liquidation preference \$1,000 per security, issued or to be issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
- (m) <u>"Independent Investment Banker"</u> means an independent investment banking institution of national standing appointed by the Company.
 - (n) "Junior Securities" has the meaning set forth in Section 2.
- (o) "<u>LIBOR Business Day</u>" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.
- (p) "<u>LIBOR Determination Date</u>" means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.
- (q) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (r) "Parity Securities" has the meaning set forth in Section 2.
 - (s) "Primary Treasury Dealer" has the meaning set forth in Section 3(x).

- (t) "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation.
- (u) "Rating Agencies" means, at any time, Standard & Poor's Rating Services, a Division of the McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc., but only in the case of each such agency if it is rating the relevant security, including the Fixed-to-Floating Rate Delaware Preferred Securities at the relevant time or, if none of them is providing a rating for the relevant security, including the Fixed-to-Floating Rate Delaware Preferred Securities at such time, then any "nationally recognized statistical rating organization" as that phrase is defined for purposes of Rule 436(g)(2) under the Securities Act of 1933, as amended, which is rating such relevant security.
- (v) A <u>"Rating Agency Event"</u> occurs when the Company reasonably determines that an amendment, clarification or change has occurred in the equity criteria for securities such as the Fixed-to-Floating Rate Delaware Preferred Securities of any Rating Agency that then publishes a rating for the Company which amendment, clarification or change results in a lower equity credit for the Company than the respective equity credit assigned by such Rating Agency to the Fixed-to-Floating Rate Delaware Preferred Securities on the Designation Date.
- (w) "Redemption Date" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (x) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (y) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (z) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Fixed-to-Floating Rate Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Fixed-to-Floating Rate Delaware Preferred Securities.
 - (aa) <u>"Series I Preferred Stock"</u> has the meaning set forth in Section 2.
 - (bb) <u>"Series J Preferred Stock"</u> has the meaning set forth in Section 2.
 - (cc) <u>"Series K Preferred Stock"</u> has the meaning set forth in Section 2.

- (dd) "Series L Preferred Stock" has the meaning set forth in Section 1.
- (ee) <u>"Ten-Year Date"</u> means the Dividend Payment Date in December 2016 and the Dividend Payment Date of each tenth succeeding year (i.e., December 2026, December 2036, etc.), assuming in each case that the Series L Preferred Stock has been issued.
- (ff) "Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (gg) "<u>Trust Securities</u>" means the Fixed-to-Floating Rate Perpetual Noncumulative Trust Securities, liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust II, a Delaware statutory trust.
- (hh) "<u>US LIBOR Telerate Page 3750</u>" means the display page of Moneyline's Telerate Service designated as 3750 (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to 3-Month USD LIBOR).
 - (ii) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (jj) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. <u>Dividends</u>.

- (a) Holders of shares of Series L Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series L Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series L Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period", except that, if the Series L Preferred Stock is outstanding on December 15, 2016, the Dividend Period ending in December 2016 shall be to but excluding December 15, 2016 (whether or not a Business Day) and the Dividend Period ending in March 2017 shall commence on December 15, 2016 (whether or not a Business Day).
- (c) If the date of issuance of the Series L Preferred Stock is prior to the day immediately preceding December 15, 2016 or, if December 15, 2016 is not a Business Day, the first Business Day after December 15, 2016, then from such date of issuance to but not including December 15, 2016 (whether or not a Business Day), dividends, if, when and as

declared by the Board of Directors, will be, for each outstanding share of Series L Preferred Stock, at an annual rate of 6.665% on the per share liquidation preference of the Series L Preferred Stock. From the later of the (i) December 15, 2016 and (ii) the date of issuance of the Series L Preferred Stock, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series L Preferred Stock, at an annual rate on the per share liquidation preference of the Series L Preferred Stock equal to 3-Month USD LIBOR for the related Dividend Period plus 1.7925%. Dividends payable for any Dividend Period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period if such Dividend Period ends in or prior to December 2016; thereafter dividends payable for any period greater or less than a full dividend period will be computed on the basis of the actual number of days in the relevant period divided by 360. No interest will be paid on any dividend payment of the Series L Preferred Stock.

- (d) Dividends on the Series L Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series L Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series L Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series L Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.
- (e) If full dividends on all outstanding shares of the Series L Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. Liquidation.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series L Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series L Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series L Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series L Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series L Preferred Stock and the corresponding amounts payable on any other Securities of equal ranking, the holders of Series L Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.

Section 6. <u>Maturity</u>. The Series L Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series L Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series L Preferred Stock shall be redeemable at the option of the Company in any of the following circumstances:
- (i) in whole but not in part, prior to the Dividend Payment Date in December 2016, upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to the sum of:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series L Preferred Stock

and

- share of Series L Preferred Stock, discounted from the Dividend Payment Date in December 2016 to the redemption date, and the present values of all undeclared dividends for each Dividend Period from the redemption date to and including the Dividend Payment Date in December 2016, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, *plus 0.50%*; *plus*
 - (B) any declared but unpaid dividends to the redemption date;
- (ii) in whole but not in part, on any Dividend Payment Date prior to the Dividend Payment Date in December 2016 for any reason other than the occurrence of a Rating Agency Event or a Regulatory Capital Event, at a cash redemption price equal to:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series L Preferred Stock, or
- share of Series L Preferred Stock discounted from the Dividend Payment Date in December 2016 to the redemption date, and the present values of all undeclared dividends for the Dividend Periods from the redemption date to and including the Dividend Payment Date in December 2016, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, plus 0.35%; plus
 - (B) any declared but unpaid dividends to the redemption date;

- (iii) in whole but not in part, on any Dividend Payment Date after the Dividend Payment Date in December 2016 that is not a Ten-Year Date, upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to \$1,000,000 per share of Series L Preferred Stock, *plus* any declared and unpaid dividends to the redemption date;
- (iv) in whole or in part, on each Dividend Payment Date that is a Ten-Year Date, at a cash redemption price of \$1,000,000 per share of Series L Preferred Stock, *plus* any declared and unpaid dividends to the redemption date; and
- (v) in whole but not in part, on any Dividend Payment Date after the Dividend Payment Date in December 2016 that is not a Ten-Year Date for any reason other than the occurrence of a Rating Agency Event or a Regulatory Capital Event, at a cash redemption price equal to:

(A) the greater of:

- (1) \$1,000,000 per share of Series L Preferred Stock, or
- share of Series L Preferred Stock, discounted from the next succeeding Ten-Year Date to the redemption date, and the present values of all undeclared dividends for the Dividend Periods from the redemption date to and including the next succeeding Ten-Year Date, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the 3-month USD LIBOR Rate applicable to the Dividend Period immediately preceding such redemption date (which 3-month USD LIBOR Rate will also, for the purposes of calculating such redemption price, be the rate used in calculating the amount for each undeclared dividend), as calculated by an Independent Investment Banker; plus
 - (B) any declared but unpaid dividends to the redemption date;

in each case, without accumulation of any undeclared dividends with respect to Dividend Payment Dates prior to the redemption date.

- (c) Dividends will cease to accrue on the Series L Preferred Stock called for redemption on and as of the date fixed for redemption and such Series L Preferred Stock will be deemed to cease to be outstanding, *provided* that the redemption price, including any authorized and declared but unpaid dividends for the current Dividend Period, if any, to the date fixed for redemption, has been duly paid or provision has been made for such payment.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series L Preferred Stock, not less than thirty nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series L Preferred Stock. The notice of redemption shall include a statement of (i) the redemption date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series L Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become

authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series L Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series L Preferred Stock accordingly.

Section 8. Voting Rights.

- (a) Holders of the Series L Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in this Section 8.
- (b) Holders of the Series L Preferred Stock will in the circumstances to the extent set forth in this Section 8(b), have the right to elect two directors.
- (i) If after the issuance of the Series L Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series L Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series L Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends in full on the Series L Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series L Preferred Stock.
- (ii) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at such time as the Company pays dividends in full on the Series L Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series L Preferred Stock. After the term of such additional directors terminates, the holders of the Series L Preferred Stock will not be entitled to elect additional directors unless full dividends on the Series L Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.
- (iii) Any additional director elected by the holders of the Series L Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series L Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. Any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series L Preferred Stock and Voting Parity Securities, voting together as a single and separate class.
- (c) So long as any shares of Series L Preferred Stock are outstanding, the vote or consent of the holders of at least 66 2/3% of the shares of Series L Preferred Stock at the time outstanding, voting as a class with all other classes and series of Parity Securities upon which like voting rights have been conferred and are exercisable, given in person or by proxy,

either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Washington law:

- (i) any amendment, alteration or repeal of any provision of the Company's Amended and Restated Articles of Incorporation (including the Articles of Amendment creating the Series L Preferred Stock) or the Company's bylaws that would alter or change the voting powers, preferences or special rights of the Series L Preferred Stock so as to affect them adversely;
- (ii) any amendment or alteration of the Company's Amended and Restated Articles of Incorporation to authorize or create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Company's capital stock ranking prior to the Series L Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Company; or
- (iii) the consummation of a binding share exchange or reclassification involving the Series L Preferred Stock or a merger or consolidation of the Company with another entity, except that holders of Series L Preferred Stock will have no right to vote under this provision or under §23B.11.035 of the Revised Code of Washington or otherwise under Washington law if in each case (x) the Series L Preferred Stock remains outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such Series L Preferred Stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series L Preferred Stock, taken as a whole;

provided, however, that any increase in the amount of the authorized or issued Series L Preferred Stock or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock ranking equally with and/or junior to the Series L Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Company's liquidation, dissolution or winding up will not be deemed to adversely affect the voting powers, preferences or special rights of the Series L Preferred stock and, notwithstanding §23B.10.040(1)(a), (e) or (f) of the Revised Code of Washington or any other provision of Washington law, holders of Series L Preferred Stock will have no right to vote on such an increase, creation or issuance.

If an amendment, alteration, repeal, share exchange, reclassification, merger or consolidation described above would adversely affect one or more but not all series of preferred stock with like voting rights (including the Series L Preferred Stock for this purpose), then only the series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Section 9. <u>Certificates</u>. The Company may at its option issue the Series L Preferred Stock without certificates.

THIRD: This amendment does not provide for an exchange, reclassification or cancellation of any issued shares.

FOURTH: The date of this amendment's adoption is December 12, 2006.

FIFTH: This amendment to the Amended and Restated Articles of Incorporation was duly adopted by the Board of Directors of the Company.

SIXTH: No shareholder action was required.

EXECUTED this 12th day of December, 2006.

WASHINGTON MUTUAL, INC.

By: ____ Name: Title: _

Ex. 2D

The State of Washington

Secretary of State

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

certificate that the attached is a true and correct copy of

ARTICLES OF AMENDMENT

of

WASHINGTON MUTUAL, INC.

as filed in this office on May 23, 2007.

Date: May 23, 2007



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Sam Reed, Secretary of State



ARTICLES OF AMENDMENT

OF

WASHINGTON MUTUAL, INC.

(Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock)

Pursuant to the provisions of Chapter 23B.10 and Section 23B.06.020 of the Revised Code of Washington, the undersigned officer of Washington Mutual, Inc. (the "Company"), a corporation organized and existing under the laws of the State of Washington, does hereby submit for filing these Articles of Amendment to the Company's Amended and Restated Articles of Incorporation:

FIRST: The name of the Company is Washington Mutual, Inc.

SECOND: 500 shares of the authorized preferred stock of the Company are hereby designated "Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock".

The preferences, limitations, voting powers and relative rights of the Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock are as follows:

DESIGNATION

Section 1. <u>Designation</u>. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" (the "Series M Preferred Stock"). The number of shares constituting such series shall be 500. The Series M Preferred Stock shall have no par value per share and the liquidation preference of the Series M Preferred Stock shall be \$1,000,000.00 per share. Shares of the Series M Preferred Stock shall be issued if and only if a Conditional Exchange occurs.

Section 2. Ranking.

The Series M Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock"), the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), the Company's Series K Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series K Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series M Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with or senior

to the Series M Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Junior Securities"). The Company has the right to authorize and/or issue additional shares or series of Junior Securities and Parity Securities without the consent of the holders of the Series M Preferred Stock.

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- "3-Month USD LIBOR" means, with respect to any Dividend Period, a rate determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on Reuters Screen LIBOR01 Page as of approximately 11:00 a.m., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on Reuters Screen LIBOR01 Page as of approximately 11:00 a.m., London time, the Company or an affiliate of the Company on behalf of the Company will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Company to provide the Company with a quotation of the rate at which three-month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Company. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted as of approximately 11:00 am., New York time, on the first day of such Dividend Period by three major banks in New York City, New York selected by the Company for loans in U.S. dollars to leading European banks, for a three-month period commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.
- (b) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (c) "Common Stock" has the meaning set forth in Section 2.
 - (d) "Company" means Washington Mutual, Inc., a Washington corporation.
- (e) "Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in June 2012 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series M Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.

- (f) "Comparable Treasury Price" means with respect to any Redemption
 Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after
 excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the
 Independent Investment Banker obtains fewer than five such Reference Treasury Dealer
 Quotations, the average of all such quotations.
- (g) "Conditional Exchange" means the automatic exchange of the Trust Securities into depositary shares representing an interest in the Series M Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
- (h) "<u>Delaware Preferred Securities</u>" means the Fixed-to-Floating Rate
 Perpetual Non-cumulative Preferred Securities, Series 2007-A, liquidation preference \$1,000
 per security, issued or to be issued by Washington Mutual Preferred Funding LLC, a Delaware
 limited liability company.
 - (i) "Designation Date" means May 24, 2007.
 - (j) "Dividend Payment Date" has the meaning set forth in Section 4(b).
 - (k) "<u>Dividend Period</u>" has the meaning set forth in Section 4(b).
- (I) "Exchange Event" means the occurrence of any one of the following at a time as the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Trust Securities into depositary shares representing an interest in the Series M Preferred Stock in anticipation of WMB becoming undercapitalized under the Prompt Corrective Action Regulations or of the OTS taking any supervisory action that limits the payment of dividends by WMB.
- (m) "Five-Year Date" means the Dividend Payment Date in June 2012, and the Dividend Payment Date of each fifth succeeding year (i.e., June 2017, June 2022, etc.) assuming in each case that the Series M Preferred Stock has been issued.
- (n) "Independent Investment Banker" means an independent investment banking institution of national standing appointed by the Company.
 - (o) "Junior Securities" has the meaning set forth in Section 2.
- (p) "<u>LIBOR Business Day</u>" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.
- (q) "LIBOR Determination Date" means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.

"OTS" means the Office of Thrift Supervision or any successor regulatory **(r)** entity. "Parity Securities" has the meaning set forth in Section 2. (s) (t) "Primary Treasury Dealer" has the meaning set forth in Section 3(y). "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation. "Rating Agencies" means, at any time, Standard & Poor's Rating (v) Services, a Division of the McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc., but only in the case of each such agency if it is rating the relevant security, including the Delaware Preferred Securities at the relevant time or, if none of them is providing a rating for the relevant security, including the Delaware Preferred Securities at such time, then any "nationally recognized statistical rating organization" as that phrase is defined for purposes of Rule 436(g)(2) under the Securities Act of 1933, as amended, which is rating such relevant security.

- (w) A <u>"Rating Agency Event"</u> occurs when the Company reasonably determines that an amendment, clarification or change has occurred in the equity criteria for securities such as the Delaware Preferred Securities of any Rating Agency that then publishes a rating for the Company which amendment, clarification or change results in a lower equity credit for the Company than the respective equity credit assigned by such Rating Agency to the Delaware Preferred Securities on the Designation Date.
- (x) "Redemption Date" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (y) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (z) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (aa) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Delaware Preferred Securities.

- (bb) "Reuters Screen LIBOR01 Page" means the display so designated on the Reuters 3000 Xtra (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to the London Interbank Offered rate for U.S. dollar deposits).
 - (cc) "Series I Preferred Stock" has the meaning set forth in Section 2.
 - (dd) "Series J Preferred Stock" has the meaning set forth in Section 2.
 - (ee) "Series K Preferred Stock" has the meaning set forth in Section 2.
 - (ff) "Series L Preferred Stock" has the meaning set forth in Section 2.
 - (gg) "Series M Preferred Stock" has the meaning set forth in Section 1.
- (hh) "Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (ii) "<u>Trust Securities</u>" means the Fixed-to-Floating Rate Perpetual Non-cumulative Trust Securities, liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust III, a Delaware statutory trust.
 - (jj) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (kk) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. Dividends.

- (a) Holders of shares of Series M Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series M Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series M Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period", except that, if the Series M Preferred Stock is outstanding on June 15, 2012, the Dividend Period ending in June 2012 shall be to but excluding June 15, 2012 (whether or not a Business Day) and the Dividend Period ending in September 2012 shall commence on June 15, 2012 (whether or not a Business Day).

- If the date of issuance of the Series M Preferred Stock is prior to the day (c) immediately preceding June 15, 2012, or if June 15, 2012 is not a Business Day, the first Business Day after June 15, 2012, then from such date of issuance to but not including June 15, 2012 (whether or not a Business Day), dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series M Preferred Stock, at an annual rate of 6.895% on the per share liquidation preference of the Series M Preferred Stock. From the later of the (i) June 15, 2012 and (ii) the date of issuance of the Series M Preferred Stock, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series M Preferred Stock, at an annual rate on the per share liquidation preference of the Series M Preferred Stock equal to 3-Month USD LIBOR for the related Dividend Period plus 1.755%. Dividends payable for any Dividend Period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period if such Dividend Period ends in or prior to June 2012; thereafter dividends payable for any period greater or less than a full dividend period will be computed on the basis of the actual number of days in the relevant period divided by 360. No interest will be paid on any dividend payment of the Series M Preferred Stock.
- (d) Dividends on the Series M Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series M Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series M Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series M Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.
- (e) If full dividends on all outstanding shares of the Series M Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. <u>Liquidation</u>.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series M Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series M Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series M Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series M Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series M Preferred Stock and the corresponding

amounts payable on any other Securities of equal ranking, the holders of Series M Preferred Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.

Section 6. <u>Maturity</u>. The Series M Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series M Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series M Preferred Stock shall be redeemable at the option of the Company in any of the following circumstances:
- (i) in whole but not in part, prior to the Dividend Payment Date in June, 2012 upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to the sum of:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series M Preferred Stock

and

- (2) The sum of the present value of \$1,000,000 per share of Series M Preferred Stock, discounted from the Dividend Payment Date in June, 2012 to the redemption date, and the present values of all undeclared dividends for each Dividend Period from the redemption date to and including the Dividend Payment Date in June, 2012 discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, plus 0.50%; plus
 - (B) any declared but unpaid dividends to the redemption date;
- (ii) in whole but not in part, on any Dividend Payment Date prior to the Dividend Payment Date in June, 2012 for any reason other than the occurrence of a Rating Agency Event or a Regulatory Capital Event, at a cash redemption price equal to:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series M Preferred Stock,

or

(2) the sum of the present value of \$1,000,000 per share of Series M Preferred Stock discounted from the Dividend Payment Date in June, 2012 to the redemption date, and the present values of all undeclared dividends for the Dividend Periods from the redemption date to and including the Dividend Payment Date in June, 2012, discounted from their applicable Dividend Payment Dates to the redemption date, in each case

on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, plus 0.35%; plus

- (B) any declared but unpaid dividends to the redemption date;
- (iii) in whole but not in part, on any Dividend Payment Date after the Dividend Payment Date in June, 2012 that is not a Five-Year Date, upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to \$1,000,000 per share of Series M Preferred Stock, *plus* any declared and unpaid dividends to the redemption date;
- (iv) in whole or in part, on each Dividend Payment Date that is a Five-Year Date, at a cash redemption price of \$1,000,000 per share of Series M Preferred Stock, plus any declared and unpaid dividends to the redemption date; and
- (v) in whole but not in part, on any Dividend Payment Date after the Dividend Payment Date in June, 2012 that is not a Five-Year Date for any reason other than the occurrence of a Rating Agency Event or a Regulatory Capital Event, at a cash redemption price equal to:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series M Preferred Stock,

or

- (2) the sum of the present value of \$1,000,000 per share of Series M Preferred Stock, discounted from the next succeeding Five-Year Date to the redemption date, and the present values of all undeclared dividends for the Dividend Periods from the redemption date to and including the next succeeding Five-Year Date, discounted from their applicable Dividend Payment Dates to the redemption date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the 3-month USD LIBOR Rate applicable to the Dividend Period immediately preceding such redemption date (which 3-month USD LIBOR Rate will also, for the purposes of calculating such redemption price, be the rate used in calculating the amount for each undeclared dividend), as calculated by an Independent Investment Banker; plus
 - (B) any declared but unpaid dividends to the redemption date;

in each case, without accumulation of any undeclared dividends with respect to Dividend Payment Dates prior to the redemption date.

- (c) Dividends will cease to accrue on the Series M Preferred Stock called for redemption on and as of the date fixed for redemption and such Series M Preferred Stock will be deemed to cease to be outstanding, *provided* that the redemption price, including any authorized and declared but unpaid dividends for the current Dividend Period, if any, to the date fixed for redemption, has been duly paid or provision has been made for such payment.
- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series M Preferred Stock, not less than 30 nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to

depositary shares representing interests in the Series M Preferred Stock. The notice of redemption shall include a statement of (i) the redemption date, (ii) the redemption price, and (iii) the number of shares to be redeemed.

(e) Any shares of Series M Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series M Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series M Preferred Stock accordingly.

Section 8. Voting Rights.

- (a) Holders of the Series M Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in this Section 8.
- (b) Holders of the Series M Preferred Stock will in the circumstances to the extent set forth in this Section 8(b), have the right to elect two directors.
- (i) If after the issuance of the Series M Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series M Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series M Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends in full on the Series M Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series M Preferred Stock.
- (ii) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at such time as the Company pays dividends in full on the Series M Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series M Preferred Stock. After the term of such additional directors terminates, the holders of the Series M Preferred Stock will not be entitled to elect additional directors unless full dividends on the Series M Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.
- (iii) Any additional director elected by the holders of the Series M Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series M Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. Any vacancy created by the removal of any such director may be filled only by the

vote of the holders of the outstanding Series M Preferred Stock and Voting Parity Securities, voting together as a single and separate class.

- (c) So long as any shares of Series M Preferred Stock are outstanding, the vote or consent of the holders of at least 66 2/3% of the shares of Series M Preferred Stock at the time outstanding, voting as a class with all other classes and series of Parity Securities upon which like voting rights have been conferred and are exercisable, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Washington law:
- (i) any amendment, alteration or repeal of any provision of the Company's Amended and Restated Articles of Incorporation (including the Articles of Amendment creating the Series M Preferred Stock) or the Company's bylaws that would alter or change the voting powers, preferences or special rights of the Series M Preferred Stock so as to affect them adversely:
- (ii) any amendment or alteration of the Company's Amended and Restated Articles of Incorporation to authorize or create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Company's capital stock ranking prior to the Series M Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Company; or
- (iii) the consummation of a binding share exchange or reclassification involving the Series M Preferred Stock or a merger or consolidation of the Company with another entity, except that holders of Series M Preferred Stock will have no right to vote under this provision or under §23B.11.035 of the Revised Code of Washington or otherwise under Washington law if in each case (x) the Series M Preferred Stock remains outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such Series M Preferred Stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series M Preferred Stock, taken as a whole;

provided, however, that any increase in the amount of the authorized or issued Series M Preferred Stock or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock ranking equally with and/or junior to the Series M Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Company's liquidation, dissolution or winding up will not be deemed to adversely affect the voting powers, preferences or special rights of the Series M Preferred stock and, notwithstanding §23B.10.040(1)(a), (e) or (f) of the Revised Code of Washington or any other provision of Washington law, holders of Series M Preferred Stock will have no right to vote on such an increase, creation or issuance.

(d) If an amendment, alteration, repeal, share exchange, reclassification, merger or consolidation described above would adversely affect one or more but not all series of preferred stock with like voting rights (including the Series M Preferred Stock for this

purpose), then only the series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Section 9. <u>Certificates</u>. The Company may at its option issue the Series M Preferred Stock without certificates.

THIRD: This amendment does not provide for an exchange, reclassification or cancellation of any issued shares.

FOURTH: The date of this amendment's adoption is May 23, 2007.

FIFTH: This amendment to the Amended and Restated Articles of Incorporation was duly adopted by the Board of Directors of the Company.

SIXTH: No shareholder action was required.

EXECUTED this 23" day of May, 200	7.	$\Lambda \Lambda \Lambda$	
••	WASHINGTO	NMUTUAL, INC.	
	Ву:	2//	
	Name: _	Peter Freilinger	
	Title:	SVP	

Ex. 2E





Secretary of State

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal, hereby issue this

certificate that the attached is a true and correct copy of

ARTICLES OF AMENDMENT

of

WASHINGTON MUTUAL, INC.

as filed in this office on October 24, 2007.

Date: October 24, 2007



Given under my hand and the Seal of the State of Washington at Olympia, the State Capital

Sam Reed, Secretary of State

FILED SECRETARY OF STATE

OCT 2 4 2007

STATE OF WASHINGTON

ARTICLES OF AMENDMENT

OF

601566389

WASHINGTON MUTUAL, INC.

(Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock)

Pursuant to the provisions of Chapter 23B.10 and Section 23B.06.020 of the Revised Code of Washington, the undersigned officer of Washington Mutual, Inc. (the "Company"), a corporation organized and existing under the laws of the State of Washington, does hereby submit for filing these Articles of Amendment to the Company's Amended and Restated Articles of Incorporation:

FIRST: The name of the Company is Washington Mutual, Inc.

SECOND: 1,000 shares of the authorized preferred stock of the Company are hereby designated "Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock".

The preferences, limitations, voting powers and relative rights of the Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock are as follows:

DESIGNATION

Section 1. <u>Designation</u>. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as the "Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock" (the "Series N Preferred Stock"). The number of shares constituting such series shall be 1,000. The Series N Preferred Stock shall have no par value per share and the liquidation preference of the Series N Preferred Stock shall be \$1,000,000.00 per share. Shares of the Series N Preferred Stock shall be issued if and only if a Conditional Exchange occurs.

Section 2. Ranking.

The Series N Preferred Stock will, with respect to dividend rights and rights on liquidation, winding-up and dissolution, rank (i) on a parity with the Company's Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series I Preferred Stock"), the Company's Series J Perpetual Non-cumulative Fixed Rate Preferred Stock (the "Series J Preferred Stock"), the Company's Series K Perpetual Non-cumulative Floating Rate Preferred Stock (the "Series K Preferred Stock"), the Company's Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock (the "Series M Preferred Stock") and with each other class or series of preferred stock established after the Designation Date by the Company the terms of which expressly provide that such class or series will rank on a parity with the Series N Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Parity Securities") and (ii) senior to the Company's common stock (the "Common Stock"), the Company's Series RP Preferred Stock and each other class of capital stock outstanding or

established after the Designation Date by the Company the terms of which do not expressly provide that it ranks on a parity with or senior to the Series N Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Company (collectively referred to as "Junior Securities"). The Company has the right to authorize and/or issue additional shares or series of Junior Securities and Parity Securities without the consent of the holders of the Series N Preferred Stock.

- Section 3. <u>Definitions</u>. Unless the context or use indicates another meaning or intent, the following terms shall have the following meanings, whether used in the singular or the plural:
- "3-Month USD LIBOR" means, with respect to any Dividend Period, a rate determined on the basis of the offered rates for three-month U.S. dollar deposits of not less than a principal amount equal to that which is representative for a single transaction in such market at such time, commencing on the first day of such Dividend Period, which appears on Reuters Screen LIBOR01 Page as of approximately 11:00 a.m., London time, on the LIBOR Determination Date for such Dividend Period. If on any LIBOR Determination Date no rate appears on Reuters Screen LIBOR01 Page as of approximately 11:00 a.m., London time, the Company or an affiliate of the Company on behalf of the Company will on such LIBOR Determination Date request four major reference banks in the London interbank market selected by the Company to provide the Company with a quotation of the rate at which three-month deposits in U.S. dollars, commencing on the first day of such Dividend Period, are offered by them to prime banks in the London interbank market as of approximately 11:00 a.m., London time, on such LIBOR Determination Date and in a principal amount equal to that which is representative for a single transaction in such market at such time. If at least two such quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of such quotations as calculated by the Company. If fewer than two quotations are provided, 3-Month USD LIBOR for such Dividend Period will be the arithmetic mean (rounded upward if necessary to the nearest .00001 of 1%) of the rates quoted as of approximately 11:00 am., New York time, on the first day of such Dividend Period by three major banks in New York City, New York selected by the Company for loans in U.S. dollars to leading European banks, for a three-month period commencing on the first day of such Dividend Period and in a principal amount of not less than \$1,000,000.
- (b) "Business Day" means any day other than a Saturday, Sunday or any other day on which banks in New York City, New York, or Seattle, Washington are generally required or authorized by law to be closed.
 - (c) "Common Stock" has the meaning set forth in Section 2.
 - (d) "Company" means Washington Mutual, Inc., a Washington corporation.
- (e) "Comparable Treasury Issue" means the United States Treasury security selected by the Independent Investment Banker as having a maturity comparable to the term remaining to the Dividend Payment Date in December 2017 that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of perpetual preferred securities having similar terms as the Series N Preferred Stock with respect to the payment of dividends and distributions of assets upon liquidation, dissolution or winding-up of the issuer of such preferred stock.

- (f) "Comparable Treasury Price" means with respect to any Redemption
 Date the average of the Reference Treasury Dealer Quotations for such Redemption Date, after
 excluding the highest and lowest of such Reference Treasury Dealer Quotations, or if the
 Independent Investment Banker obtains fewer than five such Reference Treasury Dealer
 Quotations, the average of all such quotations.
- (g) "Conditional Exchange" means the automatic exchange of the Trust Securities into depositary shares representing an interest in the Series N Preferred Stock which occurs upon the written direction of the OTS upon or after the occurrence of an Exchange Event.
- (h) "<u>Delaware Preferred Securities</u>" means the Fixed-to-Floating Rate Perpetual Non-cumulative Preferred Securities, Series 2007-B, liquidation preference \$1,000 per security, issued or to be issued by Washington Mutual Preferred Funding LLC, a Delaware limited liability company.
 - (i) "<u>Designation Date</u>" means October 25, 2007.
 - (j) "Dividend Payment Date" has the meaning set forth in Section 4(b).
 - (k) "Dividend Period" has the meaning set forth in Section 4(b).
- (I) "Exchange Event" means the occurrence of any one of the following at a time as the Trust Securities are issued and outstanding:
- (i) WMB becomes undercapitalized under the Prompt Corrective Action Regulations;
 - (ii) WMB is placed into conservatorship or receivership; or
- (iii) the OTS, in its sole discretion, directs an exchange of the Trust Securities into depositary shares representing an interest in the Series N Preferred Stock in anticipation of WMB becoming undercapitalized under the Prompt Corrective Action Regulations or of the OTS taking any supervisory action that limits the payment of dividends by WMB.
- (m) "Independent Investment Banker" means an independent investment banking institution of national standing appointed by the Company.
 - (n) "Junior Securities" has the meaning set forth in Section 2.
- (o) "<u>LIBOR Business Day</u>" means any day on which commercial banks are open for general business (including dealings in deposits in U.S. dollars) in London.
- (p) "<u>LIBOR Determination Date</u>" means, as to each Dividend Period, the date that is two LIBOR Business Days prior to the first day of such Dividend Period.
- (q) "OTS" means the Office of Thrift Supervision or any successor regulatory entity.
 - (r) "Parity Securities" has the meaning set forth in Section 2.
 - (s) "Primary Treasury Dealer" has the meaning set forth in Section 3(x).

- (t) "Prompt Corrective Action Regulation" means 12 C.F.R. Part 565 as in effect from time to time, or any successor regulation.
- (u) "Rating Agencies" means, at any time, Standard & Poor's Rating Services, a Division of the McGraw-Hill Companies, Inc., Moody's Investors Service, Inc. and Fitch, Inc., but only in the case of each such agency if it is rating the relevant security, including the Delaware Preferred Securities at the relevant time or, if none of them is providing a rating for the relevant security, including the Delaware Preferred Securities at such time, then any "nationally recognized statistical rating organization" as that phrase is defined for purposes of Rule 436(g)(2) under the Securities Act of 1933, as amended, which is rating such relevant security.
- (v) A "Rating Agency Event" occurs when the Company reasonably determines that an amendment, clarification or change has occurred in the equity criteria for securities such as the Delaware Preferred Securities of any Rating Agency that then publishes a rating for the Company which amendment, clarification or change results in a lower equity credit for the Company than the respective equity credit assigned by such Rating Agency to the Delaware Preferred Securities on the Designation Date.
- (w) "Redemption Date" means any date that is designated by the Company in a notice of redemption delivered pursuant to Section 7.
- (x) "Reference Treasury Dealer" means each of the three primary U.S. government securities dealers (each, a "Primary Treasury Dealer"), as specified by the Company; provided that if any Primary Treasury Dealer as specified by the Company ceases to be a Primary Treasury Dealer, the Company will substitute for such Primary Treasury Dealer another Primary Treasury Dealer and if the Company fails to select a substitute within a reasonable period of time, then the substitute will be a Primary Treasury Dealer selected by the Independent Investment Banker after consultation with the Company.
- (y) "Reference Treasury Dealer Quotations" means, with respect to the Reference Treasury Dealer and any Redemption Date, the average, as determined by the Independent Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed, in each case, as a percentage of its principal amount) quoted in writing to the Independent Investment Banker by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.
- (z) A "Regulatory Capital Event" occurs when the Company determines, based upon receipt of an opinion of counsel, that there is a significant risk that the Delaware Preferred Securities will no longer constitute core capital of WMB for purposes of the capital adequacy regulations issued by the OTS as a result of a change in applicable laws, regulations or related interpretations after issuance of the Delaware Preferred Securities.
- (aa) "Reuters Screen LIBOR01 Page" means the display so designated on the Reuters 3000 Xtra (or such other page as may replace that page on that service, or such other service as may be nominated as the information vendor, for the purpose of displaying rates comparable to the London Interbank Offered rate for U.S. dollar deposits).
 - (bb) "Series I Preferred Stock" has the meaning set forth in Section 2.
 - (cc) "Series J Preferred Stock" has the meaning set forth in Section 2.

- (dd) "Series K Preferred Stock" has the meaning set forth in Section 2.
- (ee) "Series L Preferred Stock" has the meaning set forth in Section 2.
- (ff) "Series M Preferred Stock" has the meaning set forth in Section 2.
- (gg) "Series N Preferred Stock" has the meaning set forth in Section 1.
- (hh) "<u>Ten-Year Date</u>" means the Dividend Payment Date in December 2017, and the Dividend Payment Date of each tenth succeeding year (i.e., December 2027, December 2037, etc.) assuming in each case that the Series N Preferred Stock has been issued.
- (ii) "Treasury Rate" means the rate per year equal to the quarterly equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the relevant Redemption Date. The Treasury Rate will be calculated on the third Business Day preceding the relevant Redemption Date.
- (jj) "<u>Trust Securities</u>" means the Fixed-to-Floating Rate Perpetual Noncumulative Trust Securities, liquidation preference \$100,000 per security, issued by Washington Mutual Preferred Funding Trust IV, a Delaware statutory trust.
 - (kk) "Voting Parity Securities" has the meaning set forth in Section 8(b).
- (II) "<u>WMB</u>" means Washington Mutual Bank, a federal savings association and a subsidiary of the Company, or its successor.

Section 4. Dividends.

- (a) Holders of shares of Series N Preferred Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of the funds legally available therefor, non-cumulative cash dividends in the amount determined as set forth in Section 4(c), and no more.
- (b) Subject to Section 4(a), dividends shall be payable in arrears on March 15, June 15, September 15 and December 15 of each year commencing on the first such day after the issuance of the Series N Preferred Stock or, in each case, if any such day is not a Business Day, the next Business Day (each, a "Dividend Payment Date"). Each dividend will be payable to holders of record as they appear on the stock books of the Company on the first day of the month in which the relevant Dividend Payment Date occurs or, if such date is not a Business Day, the first Business Day of such month. Each period from and including a Dividend Payment Date (or the date of the issuance of the Series N Preferred Stock) to but excluding the following Dividend Payment Date (or the Redemption Date) is herein referred to as "Dividend Period", except that, if the Series N Preferred Stock is outstanding on December 15, 2017, the Dividend Period ending in December 2017 shall be to but excluding December 15, 2017 (whether or not a Business Day) and the Dividend Period ending in March 2018 shall commence on December 15, 2017 (whether or not a Business Day).
- (c) If the date of issuance of the Series N Preferred Stock is prior to the day immediately preceding December 15, 2017, or if December 15, 2017 is not a Business Day, the

first Business Day after December 15, 2017, then from such date of issuance to but not including December 15, 2017 (whether or not a Business Day), dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series N Preferred Stock, at an annual rate of 9.75% on the per share liquidation preference of the Series N Preferred Stock. From the later of the (i) December 15, 2017 and (ii) the date of issuance of the Series N Preferred Stock, dividends, if, when and as declared by the Board of Directors, will be, for each outstanding share of Series N Preferred Stock, at an annual rate on the per share liquidation preference of the Series N Preferred Stock equal to 3-Month USD LIBOR for the related Dividend Period plus 4.723%. Dividends payable for any Dividend Period greater or less than a full Dividend Period will be computed on the basis of twelve 30-day months, a 360-day year, and the actual number of days elapsed in the period if such Dividend Period ends in or prior to December 2017; thereafter dividends payable for any period greater or less than a full dividend period will be computed on the basis of the actual number of days in the relevant period divided by 360. No interest will be paid on any dividend payment of the Series N Preferred Stock.

- (d) Dividends on the Series N Preferred Stock are non-cumulative. If the Board of Directors does not declare a dividend on the Series N Preferred Stock or declares less than a full dividend in respect of any Dividend Period, the holders of the Series N Preferred Stock will have no right to receive any dividend or a full dividend, as the case may be, for the Dividend Period, and the Company will have no obligation to pay a dividend or to pay full dividends for that Dividend Period, whether or not dividends are declared and paid for any future Dividend Period with respect to the Series N Preferred Stock or the Common Stock or any other class or series of the Company's preferred stock.
- (e) If full dividends on all outstanding shares of the Series N Preferred Stock for any Dividend Period have not been declared and paid, the Company shall not declare or pay dividends with respect to, or redeem, purchase or acquire any of, its equity capital securities during the next succeeding Dividend Period, except dividends in connection with the Series RP Preferred Stock or other shareholders' rights plan, if any, or dividends in connection with benefit plans.

Section 5. Liquidation.

- (a) In the event the Company voluntarily or involuntarily liquidates, dissolves or winds up, the holders of Series N Preferred Stock at the time outstanding shall be entitled to receive liquidating distributions in the amount of \$1,000,000 per share of Series N Preferred Stock, plus an amount equal to any declared but unpaid dividends thereon for the current Dividend Period to and including the date of such liquidation, out of assets legally available for distribution to its shareholders, before any distribution of assets is made to the holders of Common Stock or any securities ranking junior to the Series N Preferred Stock. After payment of the full amount of such liquidating distributions, the holders of Series N Preferred Stock will not be entitled to any further participation in any distribution of assets by, and shall have no right or claim to any remaining assets of, the Company.
- (b) In the event the assets of the Company available for distribution to shareholders upon any liquidation, dissolution or winding-up of the affairs of the Company, whether voluntary or involuntary, shall be insufficient to pay in full the amounts payable with respect to all outstanding shares of the Series N Preferred Stock and the corresponding amounts payable on any other securities of equal ranking, the holders of Series N Preferred

Stock and the holders of such other securities of equal ranking shall share ratably in any distribution of assets of the Company in proportion to the full respective liquidating distributions to which they would otherwise be respectively entitled.

Section 6. <u>Maturity</u>. The Series N Preferred Stock shall be perpetual unless redeemed by the Company in accordance with Section 7.

Section 7. Redemptions.

- (a) The Series N Preferred Stock shall not be redeemable at the option of the holders at any time.
- (b) The Series N Preferred Stock shall be redeemable at the option of the Company in any of the following circumstances:
- (i) in whole but not in part, prior to the Dividend Payment Date in December, 2017 upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to the sum of:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series N Preferred Stock

and

(2) The sum of the present value of \$1,000,000 per share of Series N Preferred Stock, discounted from the Dividend Payment Date in December, 2017 to the Redemption Date, and the present values of all undeclared dividends for each Dividend Period from the Redemption Date to and including the Dividend Payment Date in December, 2017 discounted from their applicable Dividend Payment Dates to the Redemption Date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, plus 1.00%; plus

(B) any declared but unpaid dividends to the Redemption Date;

(ii) in whole but not in part, on any Dividend Payment Date prior to the Dividend Payment Date in December, 2017 for any reason other than the occurrence of a Rating Agency Event or a Regulatory Capital Event, at a cash redemption price equal to:

- (A) the greater of:
 - (1) \$1,000,000 per share of Series N Preferred Stock,

or

(2) the sum of the present value of \$1,000,000 per share of Series N Preferred Stock discounted from the Dividend Payment Date in December, 2017 to the Redemption Date, and the present values of all undeclared dividends for the Dividend Periods from the Redemption Date to and including the Dividend Payment Date in

December, 2017, discounted from their applicable Dividend Payment Dates to the Redemption Date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the Treasury Rate, as calculated by an Independent Investment Banker, *plus 0.75%*; *plus*

(B) any declared but unpaid dividends to the Redemption Date;

- (iii) in whole but not in part, on any Dividend Payment Date after the Dividend Payment Date in December, 2017 that is not a Ten-Year Date, upon the occurrence of a Regulatory Capital Event or a Rating Agency Event, at a cash redemption price equal to \$1,000,000 per share of Series N Preferred Stock, plus any declared and unpaid dividends to the Redemption Date:
- (iv) in whole or in part, on each Dividend Payment Date that is a Ten-Year Date, at a cash redemption price of \$1,000,000 per share of Series N Preferred Stock, plus any declared and unpaid dividends to the Redemption Date; and
- (v) in whole but not in part, on any Dividend Payment Date after the Dividend Payment Date in December, 2017 that is not a Ten-Year Date for any reason other than the occurrence of a Rating Agency Event or a Regulatory Capital Event, at a cash redemption price equal to:
 - (A) the greater of:
 - (1) \$1,000,000 per share of Series N Preferred Stock,

or

share of Series N Preferred Stock, discounted from the next succeeding Ten-Year Date to the Redemption Date, and the present values of all undeclared dividends for the Dividend Periods from the Redemption Date to and including the next succeeding Ten-Year Date, discounted from their applicable Dividend Payment Dates to the Redemption Date, in each case on a quarterly basis (assuming a 360-day year consisting of twelve 30-day months) at the 3-Month USD LIBOR Rate applicable to the Dividend Period immediately preceding such Redemption Date (which 3-Month USD LIBOR Rate will also, for the purposes of calculating such redemption price, be the rate used in calculating the amount for each undeclared dividend), as calculated by an Independent Investment Banker; plus

(B) any declared but unpaid dividends to the Redemption Date;

in each case, without accumulation of any undeclared dividends with respect to Dividend Payment Dates prior to the Redemption Date.

(c) Dividends will cease to accrue on the Series N Preferred Stock called for redemption on and as of the date fixed for redemption and such Series N Preferred Stock will be deemed to cease to be outstanding, provided that the redemption price, including any authorized and declared but unpaid dividends for the current Dividend Period, if any, to the Redemption Date, has been duly paid or provision has been made for such payment.

- (d) In the case of any redemption under this Section 7, notice shall be mailed to each holder of record of the Series N Preferred Stock, not less than 30 nor more than 60 days prior to the Redemption Date specified in such notice; provided, however, that a longer minimum notice may be agreed to by the Company, including in a deposit agreement relating to depositary shares representing interests in the Series N Preferred Stock. The notice of redemption shall include a statement of (i) the Redemption Date, (ii) the redemption price, and (iii) the number of shares to be redeemed.
- (e) Any shares of Series N Preferred Stock redeemed pursuant to this Section 7 or otherwise acquired by the Company in any manner whatsoever shall become authorized but unissued preferred shares of the Company but such preferred shares shall not under any circumstances be reissued as Series N Preferred Shares. The Company shall from time-to-time take such appropriate action as may be necessary to reduce the authorized number of shares of Series N Preferred Stock accordingly.

Section 8. Voting Rights.

- (a) Holders of the Series N Preferred Stock will not have any voting rights, including the right to elect any directors, except (i) voting rights, if any, required by law, and (ii) voting rights, if any, described in this Section 8.
- (b) Holders of the Series N Preferred Stock will in the circumstances to the extent set forth in this Section 8(b), have the right to elect two directors.
- (i) If after the issuance of the Series N Preferred Stock the Company fails to pay, or declare and set aside for payment, full dividends on the Series N Preferred Stock or any other class or series of Parity Securities having similar voting rights ("Voting Parity Securities") for six Dividend Periods or their equivalent, the authorized number of the Company's directors will be increased by two. Subject to compliance with any requirement for regulatory approval of, or non-objection to, persons serving as directors, the holders of Series N Preferred Stock, voting together as a single and separate class with the holders of any outstanding Voting Parity Securities, will have the right to elect two directors in addition to the directors then in office at the Company's next annual meeting of shareholders. This right will continue at each subsequent annual meeting until the Company pays dividends in full on the Series N Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and pays or declares and sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series N Preferred Stock.
- (ii) The term of such additional directors will terminate, and the total number of directors will be decreased by two, at such time as the Company pays dividends in full on the Series N Preferred Stock and any Voting Parity Securities for three consecutive Dividend Periods or their equivalent and declares and pays or sets aside for payment dividends in full for the fourth consecutive Dividend Period or its equivalent or, if earlier, upon the redemption of all Series N Preferred Stock. After the term of such additional directors terminates, the holders of the Series N Preferred Stock will not be entitled to elect additional directors unless full dividends on the Series N Preferred Stock have again not been paid or declared and set aside for payment for six future Dividend Periods.

- (iii) Any additional director elected by the holders of the Series N Preferred Stock and the Voting Parity Securities may only be removed by the vote of the holders of record of the outstanding Series N Preferred Stock and Voting Parity Securities, voting together as a single and separate class, at a meeting of the Company shareholders called for that purpose. Any vacancy created by the removal of any such director may be filled only by the vote of the holders of the outstanding Series N Preferred Stock and Voting Parity Securities, voting together as a single and separate class.
- (c) So long as any shares of Series N Preferred Stock are outstanding, the vote or consent of the holders of at least 66 2/3% of the shares of Series N Preferred Stock at the time outstanding, voting as a class with all other classes and series of Parity Securities upon which like voting rights have been conferred and are exercisable, given in person or by proxy, either in writing without a meeting or by vote at any meeting called for the purpose, will be necessary for effecting or validating any of the following actions, whether or not such approval is required by Washington law:
- (i) any amendment, alteration or repeal of any provision of the Company's Amended and Restated Articles of Incorporation (including the Articles of Amendment creating the Series N Preferred Stock) or the Company's bylaws that would alter or change the voting powers, preferences or special rights of the Series N Preferred Stock so as to affect them adversely;
- (ii) any amendment or alteration of the Company's Amended and Restated Articles of Incorporation to authorize or create, or increase the authorized amount of, any shares of, or any securities convertible into shares of, any class or series of the Company's capital stock ranking prior to the Series N Preferred Stock in the payment of dividends or in the distribution of assets on any liquidation, dissolution or winding up of the Company; or
- (iii) the consummation of a binding share exchange or reclassification involving the Series N Preferred Stock or a merger or consolidation of the Company with another entity, except that holders of Series N Preferred Stock will have no right to vote under this provision or under §23B.11.035 of the Revised Code of Washington or otherwise under Washington law if in each case (x) the Series N Preferred Stock remains outstanding or, in the case of any such merger or consolidation with respect to which the Company is not the surviving or resulting entity, is converted into or exchanged for preference securities of the surviving or resulting entity or its ultimate parent, and (y) such Series N Preferred Stock remaining outstanding or such preference securities, as the case may be, have such rights, preferences, privileges and voting powers, taken as a whole, as are not materially less favorable to the holders thereof than the rights, preferences, privileges and voting powers of the Series N Preferred Stock, taken as a whole;

provided, however, that any increase in the amount of the authorized or issued Series N Preferred Stock or authorized preferred stock or the creation and issuance, or an increase in the authorized or issued amount, of other series of preferred stock ranking equally with and/or junior to the Series N Preferred Stock with respect to the payment of dividends (whether such dividends are cumulative or non-cumulative) and/or the distribution of assets upon the Company's liquidation, dissolution or winding up will not be deemed to adversely affect the voting powers, preferences or special rights of the Series N Preferred stock and, notwithstanding §23B.10.040(1)(a), (e) or (f) of the Revised Code of Washington or any other provision of Washington law, holders of Series N Preferred Stock will have no right to vote on such an increase, creation or issuance.

(d) If an amendment, alteration, repeal, share exchange, reclassification, merger or consolidation described above would adversely affect one or more but not all series of preferred stock with like voting rights (including the Series N Preferred Stock for this purpose), then only the series affected and entitled to vote shall vote as a class in lieu of all such series of preferred stock.

Section 9. <u>Certificates</u>. The Company may at its option issue the Series N Preferred Stock without certificates.

THIRD: This amendment does not provide for an exchange, reclassification or cancellation of any issued shares.

FOURTH: The date of this amendment's adoption is October 24, 2007.

FIFTH: This amendment to the Amended and Restated Articles of Incorporation was duly adopted by the Board of Directors of the Company.

SIXTH: No shareholder action was required.

EXECUTED this 24th day of October, 2007.

WASHINGTON MUTUAL, INC.

By:

Name: Perer Freilinger
Title: Senior Vice President

Ex. 3A

WASHINGTON MUTUAL, INC., MELLON INVESTOR SERVICES LLC, AS DEPOSITARY, MELLON INVESTOR SERVICES LLC, AS REGISTRAR,

AND

THE HOLDERS FROM TIME TO TIME OF THE RECEIPTS EVIDENCING THE DEPOSITARY SHARES DESCRIBED HEREIN

DEPOSIT AGREEMENT

Dated as of March 7, 2006

DEPOSIT AGREEMENT

dated as of March 7, 2006 among

WASHINGTON MUTUAL, INC., a Washington corporation,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Depositary,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Registrar,

AND THE HOLDERS FROM TIME TO TIME OF THE RECEIPTS EVIDENCING THE DEPOSITARY SHARES DESCRIBED HEREIN

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series J Perpetual Non-cumulative Fixed Rate Preferred Stock, liquidation preference \$1,000,000.00 per share, of the Company (the "Fixed Rate WMI Preferred Stock") with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts by the Depositary evidencing Fixed Rate Depositary Shares in respect of the Fixed Rate WMI Preferred Stock so deposited;

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, liquidation preference \$1,000,000.00 per share, of the Company (the "Fixed-to-Floating Rate WMI Preferred Stock" and, together with the Fixed Rate WMI Preferred Stock, the "Stock") with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts by the Depositary evidencing Fixed-to-Floating Rate Depositary Shares in respect of the Fixed-to-Floating Rate WMI Preferred Stock so deposited;

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the issuance hereunder of Receipts by the Depositary evidencing newly issued fixed rate depositary shares each representing a 1/1000th interest in one share of the Fixed Rate WMI Preferred Stock so deposited (each a "Fixed Rate Depositary Share"); and

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the issuance hereunder of Receipts by the Depositary evidencing newly issued fixed-to-floating rate depositary shares each representing a 1/1000th interest in one share of the Fixed-to-Floating Rate WMI Preferred Stock so deposited (each, a "Fixed-to-Floating Rate Depositary Share" and, together with the Fixed Rate Depositary Shares, the "Depositary Shares").

NOW, THEREFORE, in consideration of the promises contained herein and such other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement (including the recitals hereto) and the Receipts:

"Amendments" shall mean the Series I Amendments and the Series J Amendments.

"Company" shall mean Washington Mutual, Inc., a Washington corporation, and its successors.

"Company's Articles of Incorporation" shall mean the amended and restated articles of incorporation, as amended, of the Company.

"<u>Deposit Agreement</u>" shall mean this Deposit Agreement, as amended or supplemented from time to time in accordance with the terms hereof.

"Depositary" shall mean Mellon Investor Services LLC, a New Jersey limited liability company, and any successor Depositary and Registrar hereunder.

"Depositary Shares" has the meaning specified in the recitals of this Deposit Agreement.

"Depositary's Agent" shall mean an agent appointed by the Depositary pursuant to Section 7.05 of this Deposit Agreement.

"<u>Depositary's Office</u>" shall mean the principal office of the Depositary at which at any particular time its depositary business shall be administered.

"Exchange Agreement" shall mean that certain Exchange Agreement, dated as of March 7, 2006, by and among Washington Mutual Preferred Funding (Cayman) I Ltd., Washington Mutual Preferred Funding Trust I, the Company and Mellon Investor Services LLC, as Depositary, as amended or supplemented from time to time.

"<u>Fixed Rate Depositary Shares</u>" has the meaning specified in the recitals of this Deposit Agreement.

"<u>Fixed Rate WMI Preferred Stock</u>" has the meaning specified in the recitals of this Deposit Agreement.

"<u>Fixed-to-Floating Rate Depositary Shares</u>" has the meaning specified in the recitals of this Deposit Agreement.

"<u>Fixed-to-Floating Rate WMI Preferred Stock</u>" has the meaning specified in the recitals of this Deposit Agreement.

"NASD" shall have the meaning assigned to it in Section 2.06 of this Deposit Agreement.

"Receipt" shall mean one of the depositary receipts, whether in definitive or temporary form, issued hereunder by the Depositary, each representing any number of whole Depositary Shares.

"record holder" with respect to a Receipt shall mean the individual, entity or person in whose name a Receipt is registered on the books of the Depositary or any register of any Registrar maintained for such purpose at a given time.

"Redemption Date" shall have the meaning assigned to it in Section 2.03 of this Deposit Agreement.

"Registrar" shall mean (i) Mellon Investor Services LLC, as appointed by the Company and the Depositary hereunder, or (ii) in the case that Mellon Investor Services LLC is no longer the appointed Registrar hereunder, any bank or trust company that shall be appointed by the Depositary (with the approval of the Company) to register ownership and transfers of Receipts as herein provided and which may include the Depositary.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Series I Amendments" shall mean the articles of amendment to the Company's Articles of Incorporation filed with the Secretary of State of the State of Washington establishing the Fixed-to-Floating Rate WMI Preferred Stock.

"Series J Amendments" shall mean the articles of amendment to the Company's Articles of Incorporation filed with the Secretary of State of the State of Washington establishing the Fixed Rate WMI Preferred Stock.

"Stock" has the meaning specified in the recitals of this Deposit Agreement.

ARTICLE II

FORM OF RECEIPTS; DEPOSIT OF STOCK; EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.01. <u>Form and Transfer of Receipts</u>. The beneficial owners of Depositary Shares shall be entitled to receive Receipts in physical, certificated form as herein provided.

Definitive Receipts shall be engraved or printed or lithographed on steel-engraved borders and,

- (a) in the case of definitive Receipts representing Fixed Rate Depositary Shares shall be substantially in the form annexed hereto as Exhibit A, and
- (b) in the case of definitive Receipts representing Fixed-to-Floating Rate Depositary Shares shall be substantially in the form annexed hereto as Exhibit B,

in each case, with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon the written order

of the Company delivered in compliance with Section 2.02, shall execute and deliver temporary Receipts which shall be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine (but which do not affect the rights or duties of the Depository), as evidenced by their execution of such Receipts. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office, without charge to the holders. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts registered in the name (and only the name) of the holder of the temporary Receipt. Such exchange shall be made at the Company's expense and without any charge therefor to the holder. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual signature of a duly authorized officer of the Depositary; provided, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by manual signature of a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been (i) executed manually by a duly authorized officer of the Depositary or (ii) executed by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned manually by a duly authorized officer of a Registrar for the Receipts (other than the Depositary, if any). The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided. The manual or facsimile signatures on the Receipts of individuals who were at any time proper officers of the Depositary or the Registrar, as the case may be, shall constitute adequate signatures hereunder, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the delivery of such Receipts or did not hold such offices on the date of delivery of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares.

Unless the Depositary Shares and the Receipts are registered under the Securities Act, Receipts must bear the legend set forth below, and shall bear such other legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary and approved by the Company or required to comply with any applicable law or regulation or, to the extent shares of Stock, the Depositary Shares or the Receipts are listed, with the rules and regulations of any securities exchange upon which such shares of Stock, Depositary Shares or Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

THESE OFFERED SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT (I) PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OF 1933 (AS AMENDED), OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER, AND (II) IN COMPLIANCE WITH ANY APPLICABLE

STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

Subject to any limitations set forth in a Receipt or in this Deposit Agreement, title to Depositary Shares evidenced by a Receipt which is properly endorsed, or accompanied by a properly executed instrument of transfer, shall be transferable by delivery of such Receipt with the same effect as if such Receipt were a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Registrar, on behalf of the Depositary, as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions with respect to the Stock or to any notice provided for in this Deposit Agreement and for all other purposes.

The Depositary shall not lend any shares of Stock deposited hereunder.

SECTION 2.02. Deposit of Stock; Execution and Delivery of Receipts in Respect Thereof. Subject to the terms and conditions of the Exchange Agreement and this Deposit Agreement, the Company may from time to time deposit shares of Stock with the Depositary under this Deposit Agreement by delivery to the Depositary of a certificate or certificates representing the shares of Stock to be deposited. Such certificate or certificates representing the shares of Stock shall be (i) properly endorsed or, if required by the Depositary, accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, and (ii) accompanied by a written order of the Company directing the Depositary to execute and deliver to the person or persons named in such order a Receipt or Receipts evidencing in the aggregate, the number of Fixed Rate Depositary Shares representing interests in such deposited shares of Fixed-to-Floating Rate Depositary Shares representing interests in such deposited shares of Fixed-to-Floating Rate WMI Preferred Stock, as applicable.

All shares of Stock deposited by the Company with the Depositary shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

Upon receipt by the Depositary of a certificate or certificates representing shares of Stock deposited with the Depositary by the Company in accordance with the provisions of this Section 2.02, together with the other documents required as above specified, and upon recordation of the shares of Stock so deposited on the books of the Company in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver, to the person or persons named in the written order delivered to the Depositary, a Receipt or Receipts, evidencing in the aggregate the number of Fixed Rate Depositary Shares representing interests in the shares of Fixed Rate WMI Preferred Stock so deposited and the number of Fixed-to-Floating Rate Depositary Shares representing interests in the shares of Fixed-to-Floating Rate WMI Preferred Stock so deposited, as applicable. Such Receipt or Receipts shall be registered by the Depositary or the Registrar in such name or names as may be requested by the person or persons named in the written order. The Depositary shall execute and deliver such Receipts at the Depositary's Office or such other offices, if any, as such

person may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

Other than in the case of splits, combinations or other reclassifications affecting the Stock, or in the case of dividends or other distributions in the form of shares of Stock, if any, there shall be deposited with the Depositary hereunder not more than 750 shares of Fixed Rate WMI Preferred Stock and 1,250 shares of Fixed-to-Floating Rate WMI Preferred Stock.

SECTION 2.03. Redemption of Stock. Whenever the Company shall elect to redeem shares of Fixed Rate WMI Preferred Stock in accordance with the provisions of the Series J Amendments and/or Fixed-to-Floating Rate WMI Preferred Stock in accordance with the provisions of the Series I Amendments, it shall (unless otherwise agreed in writing with the Depositary) mail notice to the Depositary of such redemption, by first class mail, postage prepaid, not less than 40 nor more than 60 days prior to the date fixed for the redemption of the shares of such Stock in accordance with the provisions of the Series J Amendments and/or the Series I Amendments, as applicable. On the date of such redemption, provided that the Company shall then have paid in full to the Depositary the redemption price required pursuant to the Series J Amendments and/or the Series I Amendments, as applicable, and sufficient to redeem the shares of Stock to be redeemed, the Depositary shall redeem the Depositary Shares representing interests in such deposited shares of Stock. The Depositary shall mail notice of such redemption, and the simultaneous redemption of the number of Fixed Rate Depositary Shares representing interests in such deposited shares of Fixed Rate WMI Preferred Stock and/or the number of Fixed-to-Floating Rate Depositary Shares representing interests in such deposited shares of Fixed-to-Floating Rate WMI Preferred Stock, as applicable, to be redeemed, by firstclass mail, postage prepaid, not less than 30 and not more than 60 days prior to the date fixed for redemption of such shares of Stock and Depositary Shares (the "Redemption Date"), to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed on the record date fixed pursuant to Section 4.04 hereof, at the addresses of such holders as they appear on the records of the Depositary; provided, however, that neither failure to mail any such notice to one or more such holders nor any defect in any notice or in the mailing thereof to one or more such holders shall affect the validity of the proceedings for redemption of any Depositary Shares as to other holders. Each such notice of redemption shall be prepared by the Company and delivered to the Depository for subsequent delivery and shall state: (i) the Redemption Date; (ii) the number of Fixed Rate Depositary Shares representing interests in such deposited shares of Fixed Rate WMI Preferred Stock and/or the number of Fixed-to-Floating Rate Depositary Shares representing interests in such deposited shares of Fixed-to-Floating Rate WMI Preferred Stock, as applicable, to be redeemed and, if less than all the Depositary Shares held by any such holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed and the method by which the applicable Depositary Shares will be chosen for redemption; (iii) the redemption price (including any authorized, declared, but unpaid dividends on the Redemption Date); (iv) the place or places where Receipts evidencing the applicable Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the shares of such Stock to be redeemed, which are represented by the applicable Depositary Shares to be redeemed, will cease to accrue at the close of business on such Redemption Date. In case less than all the outstanding Fixed Rate Depositary Shares or Fixedto-Floating Rate Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by lot or pro rata as may be determined by the Company.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to redeem the shares of Stock to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph), all dividends in respect of the shares of Stock so called for redemption shall cease to accrue, the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares, cease and terminate and, upon surrender in accordance with such notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to one-thousandth (1/1000th) of the redemption price per share paid in respect of the shares of the related Stock plus authorized, declared, but unpaid dividends on the Redemption Date and, if applicable, any money or other property to which the holders of Receipts evidencing such Depositary Shares are entitled hereunder.

If less than all the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with the payment of the redemption price, a new Receipt evidencing the number of Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares, as applicable, as were evidenced by such prior Receipt and not called for redemption; provided, however, that such replacement Receipt shall be issued only in denominations of whole Depositary Shares and cash will be payable in respect of fractional interests.

SECTION 2.04. Registration of Transfer of Receipts. Subject to the terms and conditions of this Deposit Agreement, the Registrar, on behalf of the Depositary, shall register on its books transfers of Receipts from time to time upon notice to the Registrar by the Depositary of the surrender of a Receipt for transfer by the holder in person or by duly authorized attorney, which Receipt in each case must be properly endorsed or accompanied by a properly executed instrument of transfer. Upon surrender of a properly endorsed Receipt or Receipt accompanied by an instrument of transfer, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares, as applicable, as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the transferee named in the endorsement or instrument of transfer.

SECTION 2.05. Split-Ups and Combinations of Receipts; Surrender of Receipts. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts to the holder thereof or to such holder's order in the denominations requested, evidencing the aggregate number of Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares, as applicable, evidenced by the Receipt or Receipts surrendered. The Depositary shall give prompt notice of such action and the certificate numbers to the Registrar for the purpose of recording such split-up or consolidation.

SECTION 2.06. <u>Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts</u>. As a condition precedent to the execution and delivery, registration of

transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require (i) payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Section 5.07, (ii) the production of evidence satisfactory to it as to the identity and genuineness of any signature and/or (iii) compliance with the rules and regulations of any governmental body, any stock exchange or any applicable self regulatory body, including without limitation, the National Association of Securities Dealers, Inc. (the "NASD") or such other regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement.

The delivery of Receipts against the shares of Stock deposited with the Depositary may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government, governmental body or commission, stock exchange or the NASD or under any provision of this Deposit Agreement.

SECTION 2.07. Lost Receipts, Etc. If any mutilated Receipt is surrendered to the Depositary, the Depositary shall execute and deliver in exchange therefor a new Receipt of like type, form and tenor in exchange and substitution for such mutilated Receipt. In case any Receipt shall be destroyed, lost or stolen, then, in the absence of notice to the Depositary that such Receipt has been acquired by a bona fide purchaser, the Depositary shall execute and deliver a Receipt to the holder thereof of like type, form and tenor in exchange and substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to the Depositary and the Company of such destruction or loss or theft of such Receipt, of the authenticity thereof and of such holder's ownership thereof and (ii) the holder's furnishing the Depositary with indemnification satisfactory to such Depositary and the Company.

SECTION 2.08. <u>Cancellation and Destruction of Surrendered Receipts</u>. All Receipts surrendered to the Depositary or any Depositary's Agent shall be canceled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy all Receipts so canceled.

SECTION 2.09. Stock Purchase Plans. The Depositary shall take such reasonable action as shall be necessary or appropriate to permit the record holders of Receipts evidencing Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares to participate in any dividend reinvestment or other stock purchase plan sponsored by the Company that permits the participation by such holders on such terms and conditions as the Company may determine. The Depositary shall not have to take any action under this paragraph, if such actions are unreasonable, not appropriate, or otherwise require the Depositary to take actions not in the ordinary course or if the administrator of the dividend reinvestment or other stock purchase plan has notified the Depositary that such action is not feasible or impracticable.

ARTICLE III

CERTAIN OBLIGATIONS OF THE HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.01. Filing Proofs, Certificates and Other Information. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to obtain such guaranties of signature, to execute such certificates and to make such customary representations and warranties consistent with the terms of the Stock as the Depositary or the Company may deem necessary or proper. The Depositary or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.02. Payment of Taxes or Other Governmental Charges. Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses as provided in Section 5.07, or provide evidence satisfactory to the Depositary that such charges and expenses have been paid. Registration of transfer of any Receipt and delivery of all money or other property, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or all or any part of the shares of Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. Warranty as to Stock. The Company hereby represents and warrants to the Depositary that the Stock, when issued, will be validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of Receipts.

SECTION 3.04. Warranty as to this Agreement. The Depositary hereby represents and warrants that this Agreement, when issued and upon the issuance of the Receipts, will be the legal, valid and binding obligation of the Depositary, enforceable against the Depositary in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and by general equity principles. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of the Receipts.

ARTICLE IV

THE DEPOSITED SECURITIES; NOTICES

SECTION 4.01. <u>Cash Distributions</u>. Whenever the Depositary shall receive any cash dividend or other cash distribution with respect to the Fixed Rate WMI Preferred Stock and/or

the Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such dividend or distribution applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold any monies from any cash dividend or other cash distribution in respect of the applicable Stock on account of taxes, the distribution in respect of the applicable Depositary Shares shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any holder of a Receipt a fraction of one cent, and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next succeeding distribution to record holders of such Receipts.

SECTION 4.02. <u>Distributions Other Than Cash</u>. Whenever the Depositary shall receive any property (including securities) for distribution in a form other than cash with respect to the Fixed Rate WMI Preferred Stock and/or the Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such property (including securities) received by it applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Company shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale of the property thus received, or any part thereof. The net proceeds of any such sale shall, subject to Section 3.02, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of the applicable Receipts in accordance with the provisions of Section 4.01 for a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such securities, to require the Company to provide an opinion of counsel stating that such securities have been registered under the Securities Act or do not need to be so registered.

SECTION 4.03. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names the shares of Stock are recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of the related Receipts, pro rata in proportion to the number of the shares of the applicable Stock represented by each such Receipt, in such manner as the Company may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Company determines that it is not lawful or not feasible to make such rights, preferences or privileges available to holders of the related Receipts by the issue of warrants or otherwise, or (ii) if instructed by holders of the related Receipts (and to the

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extent so instructed by such holders) who do not desire to exercise such rights, preferences or privileges, then the Company, in its discretion may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, cause the Depository to sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sales shall be distributed by the Depositary to the record holders of the related Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such rights, preferences or privileges, to require the Company to provide an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be so registered.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of the applicable Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees with the Depositary that it will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its reasonable best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any security unless and until such registration statement shall have become effective, or unless the offering and sale of such securities to holders are exempt from registration under the Securities Act.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees with the Depositary that the Company will use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

SECTION 4.04. Notice of Dividends, Etc.; Fixing of Record Date for Holders of Receipts. (i) Whenever any cash dividend or other cash distribution shall become payable or any distribution of property (including securities) other than cash shall be made, (ii) if rights, preferences or privileges shall at any time be offered with respect to the Fixed Rate WMI Preferred Stock and/or the Fixed-to-Floating Rate WMI Preferred Stock, (iii) whenever the Depositary shall receive notice of (a) any meeting at which holders of shares of the Fixed Rate WMI Preferred Stock are entitled to vote or of which holders of shares of such Stock are entitled to notice, or (b) any election on the part of the Company to redeem any shares of the Fixed Rate WMI Preferred Stock and/or the Fixed-to-Floating Rate WMI Preferred Stock, or (iv) whenever the Company shall decide it is appropriate, the Depositary shall, in each such instance, fix a record date (which shall be the same date as the record date fixed by the Company with respect to the applicable Stock) for the determination of the holders of the related Receipts who shall be entitled hereunder to receive a distribution in respect of such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such

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meeting, or who should be entitled to receive notice of such meeting or for any other appropriate reasons.

SECTION 4.05. Voting Rights. Upon receipt of notice of any meeting at which the holders of shares of the Fixed Rate WMI Preferred Stock and/or the Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of the related Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, authorize the Depositary to exercise the voting rights pertaining to the number of shares of the applicable Stock represented by their related Depositary Shares (including express authority to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such authorization may be given. Upon the written request of the holders of Receipts on such record date, the Depositary shall endeavor, insofar as practicable, to vote or cause to be voted, in accordance with the instructions set forth in such requests referred to above, the votes relating to the applicable shares of Stock (or portion thereof) represented by the related Depositary Shares evidenced by all related Receipts as to which such authorization has been received. The Company hereby agrees to take all such action which may be deemed necessary by the Depository order to enable the Depositary to vote such shares of Stock or cause such shares of Stock to be voted. In the absence of authorization from the holder of a Receipt, the Depositary will abstain from voting (but, at its discretion, not from appearing at any meeting with respect to the applicable Stock unless directed to the contrary by the record holders of all the related Receipts) to the extent of the shares of such Stock (or portion thereof) represented by the applicable Depositary Shares evidenced by such Receipt.

SECTION 4.06. Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, Etc. Upon any change in par or stated value, split-up, combination or any other reclassification of the Fixed Rate WMI Preferred Stock and/or the Fixed-to-Floating Rate WMI Preferred Stock, or upon any recapitalization, reorganization, merger, amalgamation or consolidation to which the Company is a party or sale of all or substantially all of the Company's assets, the Depositary shall upon the instructions of, the Company, and in such manner as to retain as nearly as possible the percentage ownership interest in the applicable Stock of holders of the related Receipts immediately prior to such event, (i) make such adjustments in (a) the fraction of an interest in one share of the applicable Stock represented by one related Depositary Share and (b) the ratio of the redemption price per the related Depositary Share to the redemption price of a share of the applicable Stock, in each case as it may deem necessary to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of Stock, or of such recapitalization, reorganization, merger, amalgamation or consolidation or sale, and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the shares of Stock as new deposited securities so received in exchange for or upon conversion of or in respect of the shares of Stock. In any such case the Depositary shall, upon receipt of written request of the Company, execute and deliver additional Receipts, or may call for surrender of all outstanding applicable Receipts to be exchanged for new Receipts specifically describing such new deposited securities.

Anything to the contrary herein or in any Receipt notwithstanding, record holders of Receipts shall have the right from and after the effective date or any such change in par or stated

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value, split-up, combination or other reclassification of the applicable Stock or any such recapitalization, reorganization, merger, amalgamation, consolidation or sale, to the extent that holders of shares of such Stock had the right, prior to or on the applicable effective date, to convert, exchange or surrender shares of such Stock into or for other stock, securities, property or cash, to surrender the related Receipts to the Depositary with instructions to convert, exchange or surrender the shares of Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the shares of Stock represented by such Receipts has been converted or for which such shares of Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. <u>Inspection of Reports</u>. The Depositary shall make available for inspection by record holders of Receipts at the Depositary's Office, and at such other places as it may from time to time deem advisable, any reports and communications received from the Company which are received by the Depositary as the holder of shares of the applicable Stock.

SECTION 4.08. <u>List of Receipt Holders</u>. Promptly, upon request by the Company, the Depositary shall furnish to it a list, as of a specified date, of the names and addresses of all record holders, and the number of shares of Fixed Rated WMI Preferred Stock or Fixed-to-Floating Rate WMI Preferred Stock represented by the Receipts held by such holders.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.01. Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar. Upon execution of this Deposit Agreement, the Depositary shall maintain, at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Company and the Depositary hereby appoint Mellon Investor Services LLC, as Registrar under this Deposit Agreement for registration of such Receipts or Depositary Shares in accordance with the requirements of any applicable stock exchange in which the Receipts or the Depositary Shares may be listed. Such Registrar (which may be the Depositary if so permitted by the requirements of such exchange) may be removed and a substitute Registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, the Depositary Shares or the shares of Stock are listed on one or more other stock exchanges, the Depositary will, at the request of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such shares of Stock as may be required by law or applicable stock exchange regulation.

The Registrar shall maintain books at the Depositary's Office (or at such other place as shall be approved by the Company and of which the holders of Receipts shall have reasonable notice) for the registration of transfer of Receipts, which books at all reasonable times shall be

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open for inspection by the record holders of the applicable Receipts; <u>provided</u>, that the exercise of such right shall be governed by the provisions of Article 6, Section 624 of the New York Business Corporation Law, as amended, or any successor provision thereto, anything herein to the contrary notwithstanding; <u>provided</u>, <u>further</u>, that any such holder requesting to exercise such right shall certify to the Depository that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depository Shares evidenced by the Receipts.

The Depositary may cause the Registrar to close the books with respect to any class of Receipts, at any time or from time to time, when the register of stockholders of the Company is closed with respect to the applicable Stock or when such action is deemed necessary or advisable by the Depositary, any Depositary's Agent or the Company because of any requirement of law or of any government, governmental body or commission, stock exchange or any applicable self-regulatory body, including, without limitation, the NASD, or deemed expedient by it in connection with the performance of its duties hereunder.

SECTION 5.02. Prevention or Delay by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Articles of Incorporation, as amended (including the Amendments), or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability or be subject to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement, except in case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) of the party charged with such exercise or failure to exercise.

SECTION 5.03. Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, the Company or any other person or entity other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Company shall not assume any obligation or be subject to any liability under this Deposit Agreement to holders of Receipts, other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything to the contrary contained herein, neither the Depository, nor any Depository's Agent nor any Registrar shall be liable for any special, indirect, incidental,

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consequential, punitive or exemplary damages, including but not limited to, lost profits, even if such person or entity alleged to be liable has knowledge of the possibility of such damages. Any liability of the Depositary and any Registrar under this Deposit Agreement will be limited to the amount of annual fees paid by the Company to the Depositary or any Registrar.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Stock, the Depositary Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to such party against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information from any person presenting shares of Stock for deposit or any holder of a Receipt. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the party or parties specified in this Deposit Agreement.

The Depositary shall not be responsible for any failure to carry out any authorization to vote any of the shares of Stock of for the manner or effect of any such vote made, as long as such action or inaction does not result from gross negligence or willful misconduct of the Depositary. The Depositary undertakes and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement. The parties hereto acknowledge that no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar. The Depositary will indemnify the Company against any liability that may arise out of acts performed or omitted by the Depositary or any Depositary's Agent due to its or their gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary, any Depositary's Agent, any Registrar and the Company may own and deal in any class of securities of the Company and its affiliates and in Receipts subject to the provisions of applicable law. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates. In the event the Depository, the Depositary's Agent or any Registrar believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by it pursuant to this Deposit Agreement, the Depository, the Depositary's Agent or Registrar shall promptly notify the Company of the details of such alleged ambiguity or uncertainty, and may, in its sole discretion, refrain from taking any action, and the Depository, the Depositary's Agent or Registrar shall be fully protected and shall incur no liability to any person from refraining from taking such action, absent gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), unless and until (i) the rights of all parties have been fully and finally adjudicated by a court of appropriate jurisdiction or (ii) the Depository, the Depositary's Agent or Registrar receives written instructions with respect to such matter signed by the Company that eliminates such ambiguity or uncertainty to the satisfaction of the Depository, the Depositary's Agent or Registrar.

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Whenever in the performance of its duties under this Deposit Agreement, the Depositary, the Depositary's Agent or Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a certificate signed by any one of the President, any Vice President, the Treasurer or the Secretary of the Company and delivered to the Depositary; and such certificate shall be full and complete authorization and protection to the Depositary, the Depositary's Agent or Registrar and the Depositary, the Depositary's Agent or Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such certificate. The Depositary, the Depositary's Agent or Registrar shall not be liable for or by reason of any of the statements of fact or recitals contained in this Deposit Agreement or in the Receipts (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

The Depositary, the Depositary's Agent or Registrar will not be under any duty or responsibility to insure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, Stock or Depositary Shares.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

The Depositary and any Registrar hereunder:

- (i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;
- (ii) shall have no obligation to make payment hereunder unless the Company shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;
- (iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;
- (iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the

Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;

- (v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Company;
- (vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;
- (vii) shall not be called upon at any time to advise any person with respect to the Depositary Shares or Receipts;
- (viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Depositary Shares or Receipts; and
- (ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.
- SECTION 5.04. <u>Resignation and Removal of the Depositary</u>; <u>Appointment of Successor Depositary</u>. The Depositary may at any time resign as Depositary hereunder by notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

In case the Depositary acting hereunder shall at any time resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be an entity having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000 (or an affiliate of such entity). Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder and agreeing to become a party to this Deposit Agreement, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in all shares of Stock deposited with such predecessor and any monies or property held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation or other entity into or with which the Depositary may be merged, consolidated or converted, or to which the Depositary may sell all or substantially all its assets, shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or in the name of the successor Depositary.

SECTION 5.05. Corporate Notices and Reports. The Company agrees that it will deliver to the Depositary and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address furnished to it pursuant to Section 4.08, all notices and reports (including without limitation financial statements) required by law, the rules of any national securities exchange upon which the shares of Stock, the Depositary Shares or the Receipts are listed or by the Company's Articles of Incorporation, as amended (including the Amendments), to be furnished by the Company to holders of shares of the applicable Stock. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request.

SECTION 5.06. <u>Indemnification by the Company</u>. The Company shall indemnify the Depositary, any Depositary's Agent and any Registrar against, and hold each of them harmless from, any loss, liability, damage, cost or expense (including the costs and expenses of defending itself) which may arise out of (i) acts performed or omitted in connection with this Deposit Agreement and the Receipts (a) by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent), except for any liability arising out of gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such person or persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts or shares of Stock pursuant to the provisions hereof. The obligations of the Company set forth in this <u>Section 5.06</u> shall survive any succession of any Depositary, Registrar or Depositary's Agent.

SECTION 5.07. Charges and Expenses. The Company shall pay all charges of the Depositary in connection with the initial deposit of shares of Stock and the initial issuance of the Depositary Shares, and any redemption of shares of Stock. All other transfer and other taxes and governmental charges shall be at the expense of holders of Receipts. The Depositary may refuse to effect any transfer of a Receipt or any withdrawal of shares of Stock evidenced thereby until all such taxes and charges with respect to such Receipt or shares of Stock are paid by the holder thereof. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses, provided, however, the Depository need not incur such charges and expenses if repayment of such amounts is not reasonably assured to it.

All other charges and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar (including, in each case, fees and expenses of counsel) incurred in the preparation, delivery, amendment, administration and execution of this Deposit Agreement and incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depository and the Company as to the amount and

nature of such charges and expenses. The Depositary shall present any statement for charges and expenses to the Company promptly, unless the Company shall agree otherwise.

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.01. Amendment. The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment which shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the record holders of Receipts representing at least a majority of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby.

SECTION 6.02. <u>Termination</u>. This Deposit Agreement may be terminated by the Company or the Depositary only if (i) all outstanding Depositary Shares shall have been redeemed pursuant to <u>Section 2.03</u>, or (ii) there shall have been made a final distribution in respect of the Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the record holders of Receipts pursuant to <u>Section 4.01</u> or <u>4.02</u>, as applicable.

Whenever the Deposit Agreement is eligible to be terminated pursuant to (ii) above, the Depositary will mail notice of such termination to the record holders of all Receipts then outstanding at least 30 days prior to the date fixed in that notice for termination of the Deposit Agreement. If any Depositary Shares remain outstanding after the date of termination, the Depositary thereafter will discontinue the transfer of such Depositary Shares, will suspend the distribution of dividends to the owners thereof, and will not give any further notices (other than notice of such termination) or perform any further acts under this Deposit Agreement, except that the Depositary will continue (i) to collect dividends on the outstanding shares of the applicable Stock and any other distributions with respect thereto and (ii) to deliver or cause to be delivered shares of such Stock, together with such dividends and distributions, or principal and interest, and the net proceeds of any sales of rights, preferences, privileges or other property (other than real property) in exchange for the Depositary Shares surrendered. At any time after the expiration of three years from the date of termination, the Depositary may (but shall not be obligated to do so) sell the shares of Stock then held by it at a public or private sale, at such place or places and upon such terms as it deems proper and may thereafter hold the net proceeds of such sale, without liability for interest, for the pro rata benefit of the owners of the related Depositary Shares, which have not theretofore been surrendered. Subject to applicable escheat laws, any monies set aside by the Company in respect of any payment with respect to the shares of Fixed Rate WMI Preferred Stock represented by the Fixed Rate Depositary Shares and the Fixed-to-Floating Rate WMI Preferred Stock represented by the Fixed-to-Floating Depositary Shares, or dividends thereon, and unclaimed at the end of three years from the date upon which such payment is due and payable shall revert to the general funds of the Company, after which

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reversion the holders of Receipts evidencing such Depositary Shares shall look only to the general funds of the Company for payment thereof.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depository and the Depository's Agent and any Registrar under Sections 5.03, 5.06 and 5.07.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. <u>Counterparts</u>. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.02. <u>Exclusive Benefit of Parties</u>. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.03. <u>Invalidity of Provisions</u>. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or modified thereby.

SECTION 7.04. <u>Notices</u>. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or telegram, telecopy or telex confirmed by letter, addressed to the Company at Washington Mutual, Inc., Attention: Corporate Secretary, 1201 Third Avenue, WMT 1706, Seattle, Washington 98101, telephone: 1-206-490-1836, telecopy: 1-206-377-6244, or at any other address and to the attention of any other person of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to the Depositary at the Depositary's Office, at Mellon Investor Services LLC, Attention: Corporate Trust Administration, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-302-651-1000, telecopy 1-302-636-4140, with a copy to Mellon Investor Services LLC, Attention: Legal Department, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-201-680-2198, telecopy: 1-201-680-4610, or at any other address and any other person of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if

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such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram, telecopy or telex shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or telex message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any telegram or telecopy message received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or telecopy message shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.05. <u>Depositary's Agents</u>. The Depositary may from time to time appoint any Depositary's Agent to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will promptly notify the Company of any such action.

SECTION 7.06. <u>Holders of Receipts are Parties</u>. By acceptance of delivery of the Receipts, any holder from time to time of such Receipt shall be deemed to have agreed to become a party to this Deposit Agreement and to be bound by all of the terms and conditions hereof and of the Receipts to the same extent as though such person executed this Deposit Agreement.

SECTION 7.07. Governing Law. THIS DEPOSIT AGREEMENT AND THE RECEIPTS AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO APPLICABLE CONFLICTS OF LAW PROVISIONS).

SECTION 7.08. <u>Inspection of Deposit Agreement</u>. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Depositary's Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.09. <u>Headings</u>. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in <u>Exhibit A</u> hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

WASHINGTON MUTUAL, INC.

Authorized Officer

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

Mellon Investor Services LLC

as Depositary

Authorized Officer

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

Mellon Investor Services LLC

as Registrar

Authorized Officer

FORM OF RECEIPT

TEMPORARY RECEIPT EXCHANGEABLE FOR ENGRAVED RECEIPT WHEN READY FOR DELIVERY	CERTIFICATE FOR
	FIXED RATE DEPOSITARY SHARES
TRANSFERABLE DEPOSITABLE DEPOSITABLE	CUSIP
DEPOSITARY RECEIPT	SEE REVERSE FOR

DEPOSITARY RECEIPT FOR FIXED RATE DEPOSITARY SHARES, EACH FIXED RATE DEPOSITARY SHARE REPRESENTING A ONE-THOUSANDTH (1/1000TH) INTEREST IN ONE SHARE OF SERIES J PERPETUAL NON-CUMULATIVE FIXED RATE PREFERRED STOCK

WASHINGTON MUTUAL, INC. A Washington corporation

	MELLON IN	VESTOR SE	KAICES LLO	ر, as Deposit	ary (the \underline{D}	epositary)	, nereby	
certifie	s that							
	- <u> </u>						*****	

is the registered owner of FIXED RATE DEPOSITARY SHARES ("Fixed Rate Depositary Shares"), each Fixed Rate Depositary Share representing a one-thousandth (1/1000th) interest in one share of Series J Perpetual Non-cumulative Fixed Rate Preferred Stock, no par value and liquidation preference \$1,000,000.00, of Washington Mutual, Inc., a Washington corporation (the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of March 7, 2006 (the "Deposit Agreement"), among the Corporation, the Depositary, the Registrar and the holders from time to time of depositary Receipts evidencing the Fixed Rate Depositary Shares and the Fixed-to-Floating Rate Depositary Shares. Capitalized terms not otherwise defined herein shall have the meanings provided in the Deposit Agreement. By accepting this depositary Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This depositary Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual signature of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a Registrar in respect of the depositary Receipts by a duly authorized officer thereof.

Dated:

MELLON INVESTOR SERVICES LLC
Depositary and Registrar

Ву	•		
	Authorized Offi	cer	

WASHINGTON MUTUAL, INC.

WASHINGTON MUTUAL, INC. WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF A RECEIPT WHO SO REQUESTS A COPY OR SUMMARY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE PORTIONS OF THE ARTICLES OF INCORPORATION ESTABLISHING THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS APPLICABLE TO SHARES OF EACH CLASS AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES (AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES) WHICH THE CORPORATION IS AUTHORIZED TO ISSUE, INCLUDING THE SERIES J PERPETUAL NON-CUMULATIVE FIXED RATE PREFERRED STOCK. ANY SUCH REQUEST SHOULD BE ADDRESSED TO WASHINGTON MUTUAL, INC., 1201 THIRD AVENUE, WMT 1706, SEATTLE, WASHINGTON 98101, TELEPHONE: 1-206-490-1836, TELECOPY: 1-206-377-6244, ATTENTION: CORPORATE SECRETARY.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in common TEN ENT — as tenants by the entireties JT TEN — as joint tenants with right of survivors	ship and not as t	enants in common
UNIF GIFT MIN ACT—Custodian _ (Cust)	(Minor)	
under Uniform Gifts to Min	nors Act	(State)
UNIF TRF MIN ACT —Custodian _	(Minor)	
(until age) under Unifor	m Transfers to l	Minors Act
(State)		

Additional abbreviations may also be used though not in the above list.

FORM OF RECEIPT

TEMPORARY RECEIPT EXCHANGEABLE FOR ENGRAVED RECEIPT WHEN READY FOR DELIVERY	CERTIFICATE FOR
	FIXED-TO-FLOATING RATE DEPOSITARY SHARES
TRANSFERABLE DEPOSITARY RECEIPT	CUSIP
DEPOSITART RECEIFT	SEE REVERSE FOR CERTAIN DEFINITIONS

DEPOSITARY RECEIPT FOR FIXED-TO-FLOATING RATE DEPOSITARY SHARES, EACH FIXED-TO-FLOATING RATE DEPOSITARY SHARE REPRESENTING A ONE-THOUSANDTH (1/1000TH) INTEREST IN ONE SHARE OF SERIES I PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK

WASHINGTON MUTUAL, INC. A Washington corporation

MEL	LON INVESTOR	S SERVICES :	LLC, as I	Depositary	(the '	' <u>Depositary</u>	'), hereby	y
certifies that								

is the registered owner of FIXED-TO-FLOATING RATE DEPOSITARY SHARES ("Fixed-To-Floating Rate Depositary Shares"), each Fixed-to-Floating Rate Depositary Share representing a one-thousandth (1/1000th) interest in one share of Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, no par value and liquidation preference \$1,000,000.00, of Washington Mutual, Inc., a Washington corporation (the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of March 7, 2006 (the "Deposit Agreement"), among the Corporation, the Depositary, the Registrar and the holders from time to time of Depositary Receipts evidencing the Fixed-to-Floating Rate Depositary Shares and the Fixed Rate Depositary Shares. Capitalized terms not otherwise defined herein shall have the meanings provided in the Deposit Agreement. By accepting this depositary Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Depositary Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual signature of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a Registrar in respect of the depositary Receipts by a duly authorized officer thereof.

Dated:

MELLON INVESTOR SERVICES LLC

Depositary and Registrar

Ву:		
	Authorized Officer	

WASHINGTON MUTUAL, INC.

WASHINGTON MUTUAL, INC. WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF A RECEIPT WHO SO REQUESTS A COPY OR SUMMARY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE PORTIONS OF THE ARTICLES OF INCORPORATION ESTABLISHING THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS APPLICABLE TO SHARES OF EACH CLASS AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES (AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES) WHICH THE CORPORATION IS AUTHORIZED TO ISSUE, INCLUDING THE SERIES I PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK. ANY SUCH REQUEST SHOULD BE ADDRESSED TO WASHINGTON MUTUAL, INC., 1201 THIRD AVENUE, WMT 1706, SEATTLE, WASHINGTON 98101, TELEPHONE: 1-206-490-1836, TELECOPY: 1-206-377-6244, ATTENTION: CORPORATE SECRETARY.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in co TEN ENT — as tenants by the JT TEN — as joint tenants	he entireties	rship and not as	tenants in common
UNIF GIFT MIN ACT—	Custodian	(Minor)	
	(Cust)	(IVIIIIOI)	
unde	er Uniform Gifts to M	inors Act	
			(State)
UNIF TRF MIN ACT —	Custodian (Cust)	(Minor)	
(unti	il age) under Unifo	orm Transfers to	Minors Act
	(State)		

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Additional abbreviations may also be used though not in the above list.

Ex. 3B

WASHINGTON MUTUAL, INC., MELLON INVESTOR SERVICES LLC, AS DEPOSITARY, MELLON INVESTOR SERVICES LLC, AS REGISTRAR,

AND

THE HOLDERS FROM TIME TO TIME OF THE RECEIPTS EVIDENCING THE SERIES L DEPOSITARY SHARES DESCRIBED HEREIN

DEPOSIT AGREEMENT

Dated as of December 13, 2006

DEPOSIT AGREEMENT

dated as of December 13, 2006 among

WASHINGTON MUTUAL, INC., a Washington corporation,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Depositary,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Registrar,

AND THE HOLDERS FROM TIME TO TIME OF THE RECEIPTS EVIDENCING THE SERIES L DEPOSITARY SHARES DESCRIBED HEREIN

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, liquidation preference \$1,000,000.00 per share, of the Company (the "Series L Fixed-to-Floating Rate WMI Preferred Stock") with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts by the Depositary evidencing Series L Depositary Shares in respect of the Series L Fixed-to-Floating Rate WMI Preferred Stock so deposited;

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the issuance hereunder of Receipts by the Depositary evidencing newly issued Series L Depositary Shares each representing a 1/1000th interest in one share of the Series L Fixed-to-Floating Rate WMI Preferred Stock so deposited (each, a "Series L Depositary Share").

NOW, THEREFORE, in consideration of the promises contained herein and such other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement (including the recitals hereto) and the Receipts:

"Company" shall mean Washington Mutual, Inc., a Washington corporation, and its successors.

"Company's Articles of Incorporation" shall mean the amended and restated articles of incorporation, as amended, of the Company.

"<u>Deposit Agreement</u>" shall mean this Deposit Agreement, as amended or supplemented from time to time in accordance with the terms hereof.

"Depositary" shall mean Mellon Investor Services LLC, a New Jersey limited liability company, and any successor Depositary and Registrar hereunder.

"Depositary's Agent" shall mean an agent appointed by the Depositary pursuant to Section 7.05 of this Deposit Agreement.

"Depositary's Office" shall mean the principal office of the Depositary at which at any particular time its depositary business shall be administered.

"Exchange Agreement" shall mean that certain Exchange Agreement, dated as of December 13, 2006, by and among Washington Mutual Preferred Funding Trust II, the Company and Mellon Investor Services LLC, as Depositary, as amended or supplemented from time to time.

"NASD" shall have the meaning assigned to it in Section 2.06 of this Deposit Agreement.

"Receipt" shall mean one of the depositary receipts, whether in definitive or temporary form, issued hereunder by the Depositary, each representing any number of whole Depositary Shares.

"record holder" with respect to a Receipt shall mean the individual, entity or person in whose name a Receipt is registered on the books of the Depositary or any register of any Registrar maintained for such purpose at a given time.

"Redemption Date" shall have the meaning assigned to it in Section 2.03 of this Deposit Agreement.

"Registrar" shall mean (i) Mellon Investor Services LLC, as appointed by the Company and the Depositary hereunder, or (ii) in the case that Mellon Investor Services LLC is no longer the appointed Registrar hereunder, any bank or trust company that shall be appointed by the Depositary (with the approval of the Company) to register ownership and transfers of Receipts as herein provided and which may include the Depositary.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Series L Amendment" shall mean the articles of amendment to the Company's Articles of Incorporation filed with the Secretary of State of the State of Washington establishing the Series L Fixed-to-Floating Rate WMI Preferred Stock.

"Series L Depositary Shares" has the meaning specified in the recitals of this Deposit Agreement.

"Series L Fixed-to-Floating Rate WMI Preferred Stock" has the meaning specified in the recitals of this Deposit Agreement.

"Stock" has the meaning specified in the recitals of this Deposit Agreement.

ARTICLE II

FORM OF RECEIPTS; DEPOSIT OF STOCK; EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.01. <u>Form and Transfer of Receipts</u>. The beneficial owners of Depositary Shares shall be entitled to receive Receipts in physical, certificated form as herein provided.

Definitive Receipts shall be engraved or printed or lithographed on steel-engraved borders and,

in the case of definitive Receipts representing Series L Depositary Shares shall be substantially in the form annexed hereto as <u>Exhibit A</u>,

in each case, with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Company delivered in compliance with Section 2.02, shall execute and deliver temporary Receipts which shall be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine (but which do not affect the rights or duties of the Depositary), as evidenced by their execution of such Receipts. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office, without charge to the holders. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts registered in the name (and only the name) of the holder of the temporary Receipt. Such exchange shall be made at the Company's expense and without any charge therefor to the holder. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual signature of a duly authorized officer of the Depositary; provided, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by manual signature of a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been (i) executed manually by a duly authorized officer of the Depositary or (ii) executed by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned manually by a duly authorized officer of a Registrar for the Receipts (other than the Depositary, if any). The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided. The manual or facsimile signatures on the Receipts of individuals who were at any time proper officers of the Depositary or the Registrar, as the case may be, shall constitute adequate signatures hereunder, notwithstanding

that such individuals or any of them have ceased to hold such offices prior to the delivery of such Receipts or did not hold such offices on the date of delivery of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares.

Unless the Depositary Shares and the Receipts are registered under the Securities Act, Receipts must bear the legend set forth below, and shall bear such other legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary and approved by the Company or required to comply with any applicable law or regulation or, to the extent shares of Stock, the Depositary Shares or the Receipts are listed, with the rules and regulations of any securities exchange upon which such shares of Stock, Depositary Shares or Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

THESE OFFERED SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT (I) PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OF 1933 (AS AMENDED), OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER, AND (II) IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

Subject to any limitations set forth in a Receipt or in this Deposit Agreement, title to Depositary Shares evidenced by a Receipt which is properly endorsed, or accompanied by a properly executed instrument of transfer, shall be transferable by delivery of such Receipt with the same effect as if such Receipt were a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Registrar, on behalf of the Depositary, as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions with respect to the Stock or to any notice provided for in this Deposit Agreement and for all other purposes.

The Depositary shall not lend any shares of Stock deposited hereunder.

SECTION 2.02. Deposit of Stock; Execution and Delivery of Receipts in Respect Thereof. Subject to the terms and conditions of the Exchange Agreement and this Deposit Agreement, the Company may from time to time deposit shares of Stock with the Depositary under this Deposit Agreement by delivery to the Depositary of a certificate or certificates representing the shares of Stock to be deposited. Such certificate or certificates representing the shares of Stock shall be (i) properly endorsed or, if required by the Depositary, accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, and (ii) accompanied by a written order of the Company directing the Depositary to execute and deliver to the person or persons named in such order a Receipt or Receipts evidencing in the aggregate, and the number of Series L Depositary Shares representing interests in such deposited shares of Series L Fixed-to-Floating Rate WMI Preferred Stock.

All shares of Stock deposited by the Company with the Depositary shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

Upon receipt by the Depositary of a certificate or certificates representing shares of Stock deposited with the Depositary by the Company in accordance with the provisions of this Section 2.02, together with the other documents required as above specified, and upon recordation of the shares of Stock so deposited on the books of the Company in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver, to the person or persons named in the written order delivered to the Depositary, a Receipt or Receipts, evidencing in the aggregate the number of Series L Depositary Shares representing interests in the shares of Series L Fixed-to-Floating Rate WMI Preferred Stock so deposited. Such Receipt or Receipts shall be registered by the Depositary or the Registrar in such name or names as may be requested by the person or persons named in the written order. The Depositary shall execute and deliver such Receipts at the Depositary's Office or such other offices, if any, as such person may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

Other than in the case of splits, combinations or other reclassifications affecting the Stock, or in the case of dividends or other distributions in the form of shares of Stock, if any, there shall be deposited with the Depositary hereunder not more than 500 shares of Series L Fixed-to-Floating Rate WMI Preferred Stock.

SECTION 2.03. Redemption of Stock. Whenever the Company shall elect to redeem shares of Series L Fixed-to-Floating Rate WMI Preferred Stock in accordance with the provisions of the Series L Amendment, it shall (unless otherwise agreed in writing with the Depositary) mail notice to the Depositary of such redemption, by first class mail, postage prepaid, not less than 40 nor more than 60 days prior to the date fixed for the redemption of the shares of such Stock in accordance with the provisions of the Series L Amendment. On the date of such redemption, provided that the Company shall then have paid in full to the Depositary the redemption price required pursuant to the Series L Amendment, and sufficient to redeem the shares of Stock to be redeemed, the Depositary shall redeem the Depositary Shares representing interests in such deposited shares of Stock. The Depositary shall mail notice of such redemption, and the simultaneous redemption of the number of Series L Depositary Shares representing interests in such deposited shares of Series L Fixed-to-Floating Rate WMI Preferred Stock, as applicable, to be redeemed, by first-class mail, postage prepaid, not less than 30 and not more than 60 days prior to the date fixed for redemption of such shares of Stock and Depositary Shares (the "Redemption Date"), to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed on the record date fixed pursuant to Section 4.04 hereof, at the addresses of such holders as they appear on the records of the Depositary; provided, however, that neither failure to mail any such notice to one or more such holders nor any defect in any notice or in the mailing thereof to one or more such holders shall affect the validity of the proceedings for redemption of any Depositary Shares as to other holders. Each such notice of redemption shall be prepared by the Company and delivered to the Depositary for subsequent delivery and shall state: (i) the Redemption Date; (ii) the number of Series L Depositary Shares representing interests in such deposited shares of Series L Fixed-to-Floating Rate WMI Preferred Stock, to be redeemed and, if less than all the Depositary Shares held by any such holder are to be redeemed,

the number of such Depositary Shares held by such holder to be so redeemed and the method by which the applicable Depositary Shares will be chosen for redemption; (iii) the redemption price (including any authorized, declared, but unpaid dividends on the Redemption Date); (iv) the place or places where Receipts evidencing the applicable Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the shares of such Stock to be redeemed, which are represented by the applicable Depositary Shares to be redeemed, will cease to accrue at the close of business on such Redemption Date. In case less than all the outstanding or Series L Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by lot or pro rata as may be determined by the Company.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to redeem the shares of Stock to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph), all dividends in respect of the shares of Stock so called for redemption shall cease to accrue, the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares, cease and terminate and, upon surrender in accordance with such notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to one-thousandth (1/1000th) of the redemption price per share paid in respect of the shares of the related Stock plus authorized, declared, but unpaid dividends on the Redemption Date and, if applicable, any money or other securities to which the holders of Receipts evidencing such Depositary Shares are entitled hereunder.

If less than all the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with the payment of the redemption price, a new Receipt evidencing the number of Series L Depositary Shares, as applicable, as were evidenced by such prior Receipt and not called for redemption; <u>provided</u>, <u>however</u>, that such replacement Receipt shall be issued only in denominations of whole Depositary Shares and cash will be payable in respect of fractional interests.

SECTION 2.04. Registration of Transfer of Receipts. Subject to the terms and conditions of this Deposit Agreement, the Registrar, on behalf of the Depositary, shall register on its books transfers of Receipts from time to time upon notice to the Registrar by the Depositary of the surrender of a Receipt for transfer by the holder in person or by duly authorized attorney, which Receipt in each case must be properly endorsed or accompanied by a properly executed instrument of transfer. Upon surrender of a properly endorsed Receipt or Receipt accompanied by an instrument of transfer, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Series L Depositary Shares, as applicable, as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the transferee named in the endorsement or instrument of transfer.

SECTION 2.05. Split-Ups and Combinations of Receipts; Surrender of Receipts. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and

subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts to the holder thereof or to such holder's order in the denominations requested, evidencing the aggregate number of Series L Depositary Shares, evidenced by the Receipt or Receipts surrendered. The Depositary shall give prompt notice of such action and the certificate numbers to the Registrar for the purpose of recording such split-up or consolidation.

SECTION 2.06. <u>Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts</u>. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require (i) payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Section 5.07, (ii) the production of evidence satisfactory to it as to the identity and genuineness of any signature and/or (iii) compliance with the rules and regulations of any governmental body, any stock exchange or any applicable self regulatory body, including without limitation, the National Association of Securities Dealers, Inc. (the "NASD") or such other regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement.

The delivery of Receipts against the shares of Stock deposited with the Depositary may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government, governmental body or commission, stock exchange or the NASD or under any provision of this Deposit Agreement.

SECTION 2.07. Lost Receipts, Etc. If any mutilated Receipt is surrendered to the Depositary, the Depositary shall execute and deliver in exchange therefor a new Receipt of like type, form and tenor in exchange and substitution for such mutilated Receipt. In case any Receipt shall be destroyed, lost or stolen, then, in the absence of notice to the Depositary that such Receipt has been acquired by a bona fide purchaser, the Depositary shall execute and deliver a Receipt to the holder thereof of like type, form and tenor in exchange and substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to the Depositary and the Company of such destruction or loss or theft of such Receipt, of the authenticity thereof and of such holder's ownership thereof and (ii) the holder's furnishing the Depositary with indemnification satisfactory to such Depositary and the Company and (iii) payment of all applicable fees.

SECTION 2.08. <u>Cancellation and Destruction of Surrendered Receipts</u>. All Receipts surrendered to the Depositary or any Depositary's Agent shall be canceled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy all Receipts so canceled.

SECTION 2.09. Stock Purchase Plans. The Depositary shall take such reasonable action as shall be necessary or appropriate to permit the record holders of Receipts evidencing Series L Depositary Shares to participate in any dividend reinvestment or other stock purchase plan sponsored by the Company that permits the participation by such holders on such terms and conditions as the Company may determine. The Depositary shall not have to take any action under this paragraph, if such actions are unreasonable, not appropriate, or otherwise require the Depositary to take actions not in the ordinary course or if the administrator of the dividend reinvestment or other stock purchase plan has notified the Depositary that such action is not feasible or impracticable.

ARTICLE III

CERTAIN OBLIGATIONS OF THE HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.01. Filing Proofs, Certificates and Other Information. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to obtain such guaranties of signature, to execute such certificates and to make such customary representations and warranties consistent with the terms of the Stock as the Depositary or the Company may deem necessary or proper. The Depositary or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.02. Payment of Taxes or Other Governmental Charges. Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses as provided in Section 5.07, or provide evidence satisfactory to the Depositary that such charges and expenses have been paid. Registration of transfer of any Receipt and delivery of all money or other securities, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or all or any part of the shares of Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. <u>Warranty as to Stock</u>. The Company hereby represents and warrants to the Depositary that the Stock, when issued, will be validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of Receipts.

SECTION 3.04. Warranty as to this Agreement. The Depositary hereby represents and warrants that this Agreement, when issued and upon the issuance of the Receipts, will be the legal, valid and binding obligation of the Depositary, enforceable against the Depositary in accordance with its terms, except as such enforceability may be limited by applicable

bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and by general equity principles. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of the Receipts.

ARTICLE IV

THE DEPOSITED SECURITIES; NOTICES

SECTION 4.01. Cash Distributions. Whenever the Depositary shall receive any cash dividend or other cash distribution with respect to the Series L Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such dividend or distribution applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold any monies from any cash dividend or other cash distribution in respect of the applicable Stock on account of taxes, the distribution in respect of the applicable Depositary Shares shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any holder of a Receipt a fraction of one cent, and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next succeeding distribution to record holders of such Receipts. Each holder of a Receipt shall provide the Depositary with its certified tax identification number on a properly completed Form W-8 or W-9, as may be applicable. Each holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence the Internal Revenue Code of 1986 as amended, may require withholding by the Depositary of a portion of any of the distribution to be made hereunder.

SECTION 4.02. <u>Distributions Other Than Cash</u>. Whenever the Depositary shall receive any property (including securities) for distribution in a form other than cash with respect to the the Series L Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such securities received by it applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Company shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale of the securities thus received, or any part thereof. The net proceeds of any such sale shall, subject to Section 3.02, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of the applicable Receipts in accordance with the provisions of Section 4.01 for a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such securities, to require the Company to provide an opinion of counsel stating that such securities have been registered under the Securities Act or do not need to be so registered.

SECTION 4.03. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names the shares of Stock are recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of the related Receipts, pro rata in proportion to the number of the shares of the applicable Stock represented by each such Receipt, in such manner as the Company may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Company determines that it is not lawful or not feasible to make such rights, preferences or privileges available to holders of the related Receipts by the issue of warrants or otherwise, or (ii) if instructed by holders of the related Receipts (and to the extent so instructed by such holders) who do not desire to exercise such rights, preferences or privileges, then the Company, in its discretion may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, cause the Depositary to sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sales shall be distributed by the Depositary to the record holders of the related Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such rights, preferences or privileges, to require the Company to provide an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be so registered and to provide a separate fee schedule for such services.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of the applicable Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees with the Depositary that it will promptly notify the Depositary of such requirement and will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its reasonable best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any security unless and until such registration statement shall have become effective, or unless the offering and sale of such securities to holders are exempt from registration under the Securities Act and the Company shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees with the Depositary that the Company will promptly notify the Depositary of such requirement and the Company will use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

The Depositary will not be deemed to have any knowledge of any item for which it is supposed to receive notification under any Section of this Deposit Agreement unless and until it has received such notification.

SECTION 4.04. Notice of Dividends, Etc.; Fixing of Record Date for Holders of Receipts. (i) Whenever any cash dividend or other cash distribution shall become payable or any distribution of any securities shall be made, (ii) if rights, preferences or privileges shall at any time be offered with respect to the Series L Fixed-to-Floating Rate WMI Preferred Stock, (iii) whenever the Depositary shall receive notice of (a) any meeting at which holders of shares of and/or the Series L Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote or of which holders of shares of such Stock are entitled to notice, or (b) any election on the part of the Company to redeem any shares of the Series L Fixed-to-Floating Rate WMI Preferred Stock, or (iv) whenever the Company shall decide it is appropriate, the Depositary shall, in each such instance, fix a record date (which shall be the same date as the record date fixed by the Company with respect to the applicable Stock) for the determination of the holders of the related Receipts who shall be entitled hereunder to receive a distribution in respect of such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who should be entitled to receive notice of such meeting or for any other appropriate reasons.

SECTION 4.05. Voting Rights. Upon receipt of notice of any meeting at which the holders of shares of the Series L Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of the related Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, authorize the Depositary to exercise the voting rights pertaining to the number of shares of the applicable Stock represented by their related Depositary Shares (including express authority to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such authorization may be given. Upon the written request of the holders of Receipts on such record date, the Depositary shall endeavor, insofar as practicable, to vote or cause to be voted, in accordance with the instructions set forth in such requests referred to above, the votes relating to the applicable shares of Stock (or portion thereof) represented by the related Depositary Shares evidenced by all related Receipts as to which such authorization has been received. The Company hereby agrees to take all such action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such shares of Stock or cause such shares of Stock to be voted. In the absence of authorization from the holder of a Receipt, the Depositary will abstain from voting (but, at its discretion, not from appearing at any meeting with respect to the applicable Stock unless directed to the contrary by the record holders of all the related Receipts) to the extent of the shares of such Stock (or portion thereof) represented by the applicable Depositary Shares evidenced by such Receipt.

SECTION 4.06. Changes Affecting Deposited Securities and Reclassifications.

Recapitalizations, Etc. Upon any change in par or stated value, split-up, combination or any other reclassification of the Series L Fixed-to-Floating Rate WMI Preferred Stock, or upon any recapitalization, reorganization, merger, amalgamation or consolidation to which the Company is a party or sale of all or substantially all of the Company's assets, the Depositary shall upon the instructions of, the Company, and in such manner as to retain as nearly as possible the

percentage ownership interest in the applicable Stock of holders of the related Receipts immediately prior to such event, (i) make such adjustments in (a) the fraction of an interest in one share of the applicable Stock represented by one related Depositary Share and (b) the ratio of the redemption price per the related Depositary Share to the redemption price of a share of the applicable Stock, in each case as it may deem necessary to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of Stock, or of such recapitalization, reorganization, merger, amalgamation or consolidation or sale, and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the shares of Stock as new deposited securities so received in exchange for or upon conversion of or in respect of the shares of Stock. In any such case the Depositary shall, upon receipt of written request of the Company, execute and deliver additional Receipts, or may call for surrender of all outstanding applicable Receipts to be exchanged for new Receipts specifically describing such new deposited securities.

Anything to the contrary herein or in any Receipt notwithstanding, record holders of Receipts shall have the right from and after the effective date or any such change in par or stated value, split-up, combination or other reclassification of the applicable Stock or any such recapitalization, reorganization, merger, amalgamation, consolidation or sale, to the extent that holders of shares of such Stock had the right, prior to or on the applicable effective date, to convert, exchange or surrender shares of such Stock into or for other stock, securities, property or cash, to surrender the related Receipts to the Depositary with instructions to convert, exchange or surrender the shares of Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the shares of Stock represented by such Receipts has been converted or for which such shares of Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. <u>Inspection of Reports</u>. The Depositary shall make available for inspection by record holders of Receipts at the Depositary's Office, and at such other places as it may from time to time deem advisable, any reports and communications received from the Company which are received by the Depositary as the holder of shares of the applicable Stock.

SECTION 4.08. <u>List of Receipt Holders</u>. Promptly, upon request by the Company, the Depositary shall furnish to it a list, as of a specified date, of the names and addresses of all record holders, and the number of shares of Series L Fixed-to-Floating Rate WMI Preferred Stock represented by the Receipts held by such holders.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.01. Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar. Upon execution of this Deposit Agreement, the Depositary shall maintain, at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Company and the Depositary hereby appoint Mellon Investor Services LLC, as Registrar under this Deposit Agreement for registration of such Receipts or Depositary Shares in accordance with the requirements of any applicable stock exchange in which the Receipts or the Depositary Shares may be listed. Such Registrar (which may be the Depositary if so permitted by the requirements of such exchange) may be removed and a substitute Registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, the Depositary Shares or the shares of Stock are listed on one or more other stock exchanges, the Depositary will, at the request of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such shares of Stock as may be required by law or applicable stock exchange regulation.

The Registrar shall maintain books at the Depositary's Office (or at such other place as shall be approved by the Company and of which the holders of Receipts shall have reasonable notice) for the registration of transfer of Receipts, which books at all reasonable times shall be open for inspection by the record holders of the applicable Receipts; provided, that the exercise of such right shall be governed by the provisions of Article 6, Section 624 of the New York Business Corporation Law, as amended, or any successor provision thereto, anything herein to the contrary notwithstanding; provided, further, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts.

The Depositary may cause the Registrar to close the books with respect to any class of Receipts, at any time or from time to time, when the register of stockholders of the Company is closed with respect to the applicable Stock or when such action is deemed necessary or advisable by the Depositary, any Depositary's Agent or the Company because of any requirement of law or of any government, governmental body or commission, stock exchange or any applicable self-regulatory body, including, without limitation, the NASD, or deemed expedient by it in connection with the performance of its duties hereunder.

SECTION 5.02. Prevention or Delay by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Articles of Incorporation, as amended (including the Series L Amendment), or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability or be subject to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement, except in case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct (which gross negligence or willful misconduct must be

determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) of the party charged with such exercise or failure to exercise.

SECTION 5.03. Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, the Company or any other person or entity other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Company shall not assume any obligation or be subject to any liability under this Deposit Agreement to holders of Receipts, other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, nonappealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything to the contrary contained herein, neither the Depositary, nor any Depositary's Agent nor any Registrar shall be liable for any special, indirect, incidental, consequential, punitive or exemplary damages, including but not limited to, lost profits, even if such person or entity alleged to be liable has knowledge of the possibility of such damages. Any liability of the Depositary and any Registrar under this Deposit Agreement will be limited to the amount of annual fees paid by the Company to the Depositary or any Registrar.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Stock, the Depositary Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to such party against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information from any person presenting shares of Stock for deposit or any holder of a Receipt. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the party or parties specified in this Deposit Agreement.

The Depositary shall not be responsible for any failure to carry out any authorization to vote any of the shares of Stock or for the manner or effect of any such vote made, as long as such action or inaction does not result from gross negligence or willful misconduct of the Depositary. The Depositary undertakes and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement. The parties hereto acknowledge that no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar. The Depositary will indemnify the Company against any liability that may arise out of acts performed or omitted by the Depositary or any Depositary's Agent due to its or their gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary, any Depositary's Agent, any Registrar and the Company may own and deal in any class of securities of the Company and its affiliates and in Receipts subject to the provisions of applicable law. The Depositary may

also act as transfer agent or registrar of any of the securities of the Company and its affiliates. In the event the Depositary, the Depositary's Agent or any Registrar believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by it pursuant to this Deposit Agreement, the Depositary, the Depositary's Agent or Registrar shall promptly notify the Company of the details of such alleged ambiguity or uncertainty, and may, in its sole discretion, refrain from taking any action, and the Depositary, the Depositary's Agent or Registrar shall be fully protected and shall incur no liability to any person from refraining from taking such action, absent gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), unless and until (i) the rights of all parties have been fully and finally adjudicated by a court of appropriate jurisdiction or (ii) the Depositary, the Depositary's Agent or Registrar receives written instructions with respect to such matter signed by the Company that eliminates such ambiguity or uncertainty to the satisfaction of the Depositary, the Depositary's Agent or Registrar.

Whenever in the performance of its duties under this Deposit Agreement, the Depositary, the Depositary's Agent or Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a certificate signed by any one of the President, any Vice President, the Treasurer or the Secretary of the Company and delivered to the Depositary; and such certificate shall be full and complete authorization and protection to the Depositary, the Depositary's Agent or Registrar and the Depositary, the Depositary's Agent or Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such certificate. The Depositary, the Depositary's Agent or Registrar shall not be liable for or by reason of any of the statements of fact or recitals contained in this Deposit Agreement or in the Receipts (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

The Depositary, the Depositary's Agent or Registrar will not be under any duty or responsibility to insure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, Stock or Depositary Shares.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

The Depositary and any Registrar hereunder:

(i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;

- (ii) shall have no obligation to make payment hereunder unless the Company shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;
- (iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;
- (iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;
- (v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Company;
- (vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;
- (vii) shall not be called upon at any time to advise any person with respect to the Depositary Shares or Receipts;
- (viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Depositary Shares or Receipts; and
- (ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.
- SECTION 5.04. Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary hereunder by notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

In case the Depositary acting hereunder shall at any time resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be an entity having its principal office

in the United States of America and having a combined capital and surplus of at least \$50,000,000 (or an affiliate of such entity). If no successor Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder and agreeing to become a party to this Deposit Agreement, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in all shares of Stock deposited with such predecessor and any monies or securities held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation or other entity into or with which the Depositary may be merged, consolidated or converted, or to which the Depositary may sell all or substantially all its assets, shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or in the name of the successor Depositary.

SECTION 5.05. Corporate Notices and Reports. The Company agrees that it will deliver to the Depositary and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address furnished to it pursuant to Section 4.08, all notices and reports (including without limitation financial statements) required by law, the rules of any national securities exchange upon which the shares of Stock, the Depositary Shares or the Receipts are listed or by the Company's Articles of Incorporation, as amended (including the Series L Amendment), to be furnished by the Company to holders of shares of the applicable Stock. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request.

SECTION 5.06. <u>Indemnification by the Company</u>. The Company shall indemnify the Depositary, any Depositary's Agent and any Registrar against, and hold each of them harmless from, any loss, liability, damage, cost or expense (including the costs and expenses of defending itself) which may arise out of (i) acts performed or omitted in connection with this Deposit Agreement and the Receipts (a) by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent), except for any liability arising out of gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such person or persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts or shares of Stock pursuant to the provisions hereof. The obligations of the Company set forth in this <u>Section 5.06</u> shall survive any succession of any Depositary, Registrar or Depositary's Agent.

SECTION 5.07. Charges and Expenses. The Company shall pay all charges of the Depositary in connection with the initial deposit of shares of Stock and the initial issuance of the Depositary Shares, and any redemption of shares of Stock. All other transfer and other taxes and governmental charges shall be at the expense of holders of Receipts. The Depositary may refuse to effect any transfer of a Receipt or any withdrawal of shares of Stock evidenced thereby until all such taxes and charges with respect to such Receipt or shares of Stock are paid by the holder thereof. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses, provided, however, the Depositary need not incur such charges and expenses if repayment of such amounts is not reasonably assured to it.

All other charges and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar (including, in each case, fees and expenses of counsel) incurred in the preparation, delivery, amendment, administration and execution of this Deposit Agreement and incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depositary and the Company as to the amount and nature of such charges and expenses. The Depositary shall present any statement for charges and expenses to the Company promptly, unless the Company shall agree otherwise.

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.01. Amendment. The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment which shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the record holders of Receipts representing at least a majority of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby.

SECTION 6.02. <u>Termination</u>. This Deposit Agreement may be terminated by the Company or the Depositary only if (i) all outstanding Depositary Shares shall have been redeemed pursuant to <u>Section 2.03</u>, or (ii) there shall have been made a final distribution in respect of the Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the record holders of Receipts pursuant to <u>Section 4.01</u> or <u>4.02</u>, as applicable.

Whenever the Deposit Agreement is eligible to be terminated pursuant to (ii) above, the Depositary will mail notice of such termination to the record holders of all Receipts then outstanding at least 30 days prior to the date fixed in that notice for termination of the Deposit Agreement. If any Depositary Shares remain outstanding after the date of termination, the Depositary thereafter will discontinue the transfer of such Depositary Shares, will suspend the distribution of dividends to the owners thereof, and will not give any further notices (other than notice of such termination) or perform any further acts under this Deposit Agreement, except that

the Depositary will continue (i) to collect dividends on the outstanding shares of the applicable Stock and any other distributions with respect thereto and (ii) to deliver or cause to be delivered shares of such Stock, together with such dividends and distributions, or principal and interest, and the net proceeds of any sales of rights, preferences, privileges or other property (other than real property) in exchange for the Depositary Shares surrendered. At any time after the expiration of three years from the date of termination, the Depositary may (but shall not be obligated to do so) sell the shares of Stock then held by it at a public or private sale, at such place or places and upon such terms as it deems proper and may thereafter hold the net proceeds of such sale, without liability for interest, for the pro rata benefit of the owners of the related Depositary Shares, which have not theretofore been surrendered. Subject to applicable escheat laws, any monies set aside by the Company in respect of any payment with respect to the shares of the Series L Fixed-to-Floating Rate WMI Preferred Stock represented by the Series L Depositary Shares, or dividends thereon, and unclaimed at the end of three years from the date upon which such payment is due and payable shall revert to the general funds of the Company, after which reversion the holders of Receipts evidencing such Depositary Shares shall look only to the general funds of the Company for payment thereof.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary and the Depositary's Agent and any Registrar under Sections 5.03, 5.06 and 5.07.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. <u>Counterparts</u>. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.02. Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.03. <u>Invalidity of Provisions</u>. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or modified thereby.

SECTION 7.04. <u>Notices</u>. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or telegram, telecopy or telex confirmed by letter, addressed to the Company at Washington Mutual, Inc., Attention: Corporate Secretary, 1301 Second Avenue, WMC 3501, Seattle, Washington 98101, telephone: 1-206-500-4347, telecopy: 1-206-377-2236,

or at any other address and to the attention of any other person of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to the Depositary at the Depositary's Office, at Mellon Investor Services LLC, Attention: Corporate Trust Administration, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-302-651-1000, telecopy 1-302-636-4140, with a copy to Mellon Investor Services LLC, Attention: Legal Department, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-201-680-2198, telecopy: 1-201-680-4610, or at any other address and any other person of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram, telecopy or telex shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or telex message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any telegram or telecopy message received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or telecopy message shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.05. <u>Depositary's Agents</u>. The Depositary may from time to time appoint any Depositary's Agent to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will promptly notify the Company of any such action.

SECTION 7.06. <u>Holders of Receipts are Parties</u>. By acceptance of delivery of the Receipts, any holder from time to time of such Receipt shall be deemed to have agreed to become a party to this Deposit Agreement and to be bound by all of the terms and conditions hereof and of the Receipts to the same extent as though such person executed this Deposit Agreement.

SECTION 7.07. Governing Law. THIS DEPOSIT AGREEMENT AND THE RECEIPTS AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO APPLICABLE CONFLICTS OF LAW PROVISIONS).

SECTION 7.08. <u>Inspection of Deposit Agreement</u>. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection

during business hours at the Depositary's Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.09. <u>Headings</u>. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in <u>Exhibit A</u> hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

WASHINGTON MUTUAL, INC.

By:

Name: Robert J. Williams

Title: Senior Vice President and Treasurer

MELLON INVESTOR SERVICES LLC, as Depositary

By: Authorized Officer

MELLON INVESTOR SERVICES LLC, as Registrar

Authorized Officer

FORM OF RECEIPT

TEMPORARY RECEIPT EXCHANGEABLE FOR ENGRAVED RECEIPT WHEN READY FOR DELIVERY	CERTIFICATE FOR
	SERIES L DEPOSITARY SHARES
TRANSFERABLE DEPOSITARY RECEIPT	CUSIP
DEFOSITANT RECEIFT	SEE REVERSE FOR

DEPOSITARY RECEIPT FOR SERIES L DEPOSITARY SHARES, EACH SERIES L DEPOSITARY SHARE REPRESENTING A ONE-THOUSANDTH (1/1000TH) INTEREST IN ONE SHARE OF SERIES L PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK

WASHINGTON MUTUAL, INC. A Washington corporation

MELI	LON INVESTORS	SERVICES	LLC, as Do	epositary (th	ne " <u>Depositar</u>	y"), hereby
certifies that						

is the registered owner of SERIES L DEPOSITARY SHARES ("Series L Depositary Shares"), each Series L Depositary Share representing a one-thousandth (1/1000th) interest in one share of Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, no par value and liquidation preference \$1,000,000.00, of Washington Mutual, Inc., a Washington corporation (the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of December 13, 2006 (the "Deposit Agreement"), among the Corporation, the Depositary, the Registrar and the holders from time to time of Depositary Receipts evidencing the Fixed-to-Floating Rate. Capitalized terms not otherwise defined herein shall have the meanings provided in the Deposit Agreement. By accepting this depositary Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Depositary Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual signature of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a Registrar in respect of the depositary Receipts by a duly authorized officer thereof.

Dated:

MELLON INVESTOR SERVICES LLC

Depositary and Registrar

14

By:	
Authorized (Officer

WASHINGTON MUTUAL, INC.

WASHINGTON MUTUAL, INC. WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF A RECEIPT WHO SO REQUESTS A COPY OR SUMMARY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE PORTIONS OF THE ARTICLES OF INCORPORATION ESTABLISHING THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS APPLICABLE TO SHARES OF EACH CLASS AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES (AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES) WHICH THE CORPORATION IS AUTHORIZED TO ISSUE, INCLUDING THE SERIES L PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK. ANY SUCH REQUEST SHOULD BE ADDRESSED TO WASHINGTON MUTUAL, INC., 1301 SECOND AVENUE, WMC 3501, SEATTLE, WASHINGTON 98101, TELEPHONE: 1-206-500-4347, TELECOPY: 1-206-377-2366, ATTENTION: CORPORATE SECRETARY.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in TEN ENT — as tenants b JT TEN — as joint tena	y the entireties	urvivorship and	I not as tenants in common
UNIF GIFT MIN ACT—	Cus	todian	
UNIF GIFT MIN ACT—_	(Cust)	(Mino	or)
u	nder Uniform Gift	s to Minors Act	t
			(State)
UNIF TRF MIN ACT — _	Cus	todian	<u>.</u>
	(Cust)	(Mino	or)
(1	ntil age) under	Uniform Trans	sfers to Minors Act
	(State)	_	
	Additional abb used though	reviations may not in the above	
For value rec	eived,	·	hereby sell(s), assign(s) and transfer(s)
unto			

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNEE

Depositary Shares represented by the within Receipt, and do(es) hereby irrevocably
Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.
Dated:
NOTICE: The signature to the assignment must correspond with the name as written
upon the face of this Receipt in every particular, without alteration or enlargement or any
change whatsoever.
SIGNATURE GUARANTEED

NOTICE: The signature(s) should be guaranteed by an eligible guaranter institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

Ex. 3C

WASHINGTON MUTUAL, INC.,

MELLON INVESTOR SERVICES LLC, AS DEPOSITARY,

MELLON INVESTOR SERVICES LLC, AS REGISTRAR,

AND

THE HOLDERS FROM TIME TO TIME OF
THE RECEIPTS EVIDENCING THE SERIES M DEPOSITARY SHARES
DESCRIBED HEREIN

DEPOSIT AGREEMENT

Dated as of May 24, 2007

DEPOSIT AGREEMENT

dated as of May 24, 2007 among

WASHINGTON MUTUAL, INC., a Washington corporation,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Depositary,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Registrar,

AND THE HOLDERS FROM TIME TO TIME OF THE RECEIPTS EVIDENCING THE SERIES M DEPOSITARY SHARES DESCRIBED HEREIN

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, liquidation preference \$1,000,000.00 per share, of the Company (the "Series M Fixed-to-Floating Rate WMI Preferred Stock") with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts by the Depositary evidencing Series M Depositary Shares in respect of the Series M Fixed-to-Floating Rate WMI Preferred Stock so deposited;

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the issuance hereunder of Receipts by the Depositary evidencing newly issued Series M Depositary Shares each representing a 1/1000th interest in one share of the Series M Fixed-to-Floating Rate WMI Preferred Stock so deposited (each, a "Series M Depositary Share").

NOW, THEREFORE, in consideration of the promises contained herein and such other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement (including the recitals hereto) and the Receipts:

"Company" shall mean Washington Mutual, Inc., a Washington corporation, and its successors.

"Company's Articles of Incorporation" shall mean the amended and restated articles of incorporation, as amended, of the Company.

"<u>Deposit Agreement</u>" shall mean this Deposit Agreement, as amended or supplemented from time to time in accordance with the terms hereof.

"Depositary" shall mean Mellon Investor Services LLC, a New Jersey limited liability company, and any successor Depositary and Registrar hereunder.

"<u>Depositary's Agent</u>" shall mean an agent appointed by the Depositary pursuant to <u>Section 7.05</u> of this Deposit Agreement.

"Depositary's Office" shall mean the principal office of the Depositary at which at any particular time its depositary business shall be administered.

"Exchange Agreement" shall mean that certain Exchange Agreement, dated as of May 24, 2007, by and among Washington Mutual Preferred Funding Trust III, the Company and Mellon Investor Services LLC, as Depositary, as amended or supplemented from time to time.

"NASD" shall have the meaning assigned to it in Section 2.06 of this Deposit Agreement.

"Receipt" shall mean one of the depositary receipts, whether in definitive or temporary form, issued hereunder by the Depositary, each representing any number of whole Depositary Shares.

"record holder" with respect to a Receipt shall mean the individual, entity or person in whose name a Receipt is registered on the books of the Depositary or any register of any Registrar maintained for such purpose at a given time.

"Redemption Date" shall have the meaning assigned to it in Section 2.03 of this Deposit Agreement.

"Registrar" shall mean (i) Mellon Investor Services LLC, as appointed by the Company and the Depositary hereunder, or (ii) in the case that Mellon Investor Services LLC is no longer the appointed Registrar hereunder, any bank or trust company that shall be appointed by the Depositary (with the approval of the Company) to register ownership and transfers of Receipts as herein provided and which may include the Depositary.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Series M Amendment" shall mean the articles of amendment to the Company's Articles of Incorporation filed with the Secretary of State of the State of Washington establishing the Series M Fixed-to-Floating Rate WMI Preferred Stock.

"Series M Depositary Shares" has the meaning specified in the recitals of this Deposit Agreement.

"Series M Fixed-to-Floating Rate WMI Preferred Stock" has the meaning specified in the recitals of this Deposit Agreement.

"Stock" has the meaning specified in the recitals of this Deposit Agreement.

ARTICLE II

FORM OF RECEIPTS; DEPOSIT OF STOCK; EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.01. Form and Transfer of Receipts. The beneficial owners of Depositary Shares shall be entitled to receive Receipts in physical, certificated form as herein provided.

Definitive Receipts shall be engraved or printed or lithographed on steel-engraved borders and,

in the case of definitive Receipts representing Series M Depositary Shares shall be substantially in the form annexed hereto as Exhibit A,

in each case, with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Company delivered in compliance with Section 2.02, shall execute and deliver temporary Receipts which shall be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine (but which do not affect the rights or duties of the Depositary), as evidenced by their execution of such Receipts. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office, without charge to the holders. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts registered in the name (and only the name) of the holder of the temporary Receipt. Such exchange shall be made at the Company's expense and without any charge therefor to the holder. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual signature of a duly authorized officer of the Depositary; provided, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by manual signature of a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been (i) executed manually by a duly authorized officer of the Depositary or (ii) executed by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned manually by a duly authorized officer of a Registrar for the Receipts (other than the Depositary, if any). The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided. The manual or facsimile signatures on the Receipts of individuals who were at any time proper officers of the Depositary or the Registrar, as the case may be, shall constitute adequate signatures hereunder, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the delivery of such Receipts or did not hold such offices on the date of delivery of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares.

Unless the Depositary Shares and the Receipts are registered under the Securities Act, Receipts must bear the legend set forth below, and shall bear such other legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary and approved by the Company or required to comply with any applicable law or regulation or, to the extent shares of Stock, the Depositary Shares or the Receipts are listed, with the rules and regulations of any securities exchange upon which such shares of Stock, Depositary Shares or Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

THESE OFFERED SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT (I) PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OF 1933 (AS AMENDED), OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER, AND (II) IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

Subject to any limitations set forth in a Receipt or in this Deposit Agreement, title to Depositary Shares evidenced by a Receipt which is properly endorsed, or accompanied by a properly executed instrument of transfer, shall be transferable by delivery of such Receipt with the same effect as if such Receipt were a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Registrar, on behalf of the Depositary, as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions with respect to the Stock or to any notice provided for in this Deposit Agreement and for all other purposes.

The Depositary shall not lend any shares of Stock deposited hereunder.

SECTION 2.02. Deposit of Stock; Execution and Delivery of Receipts in Respect Thereof. Subject to the terms and conditions of the Exchange Agreement and this Deposit Agreement, the Company may from time to time deposit shares of Stock with the Depositary under this Deposit Agreement by delivery to the Depositary of a certificate or certificates representing the shares of Stock to be deposited. Such certificate or certificates representing the shares of Stock shall be (i) properly endorsed or, if required by the Depositary, accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, and (ii) accompanied by a written order of the Company directing the Depositary to execute and deliver to the person or persons named in such order a Receipt or Receipts evidencing in the aggregate, and the number of Series M Depositary Shares representing interests in such deposited shares of Series M Fixed-to-Floating Rate WMI Preferred Stock.

All shares of Stock deposited by the Company with the Depositary shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

Upon receipt by the Depositary of a certificate or certificates representing shares of Stock deposited with the Depositary by the Company in accordance with the provisions of this Section 2.02, together with the other documents required as above specified, and upon recordation of the shares of Stock so deposited on the books of the Company in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver, to the person or persons named in the written order delivered to the Depositary, a Receipt or Receipts, evidencing in the aggregate the number of Series M Depositary Shares representing interests in the shares of Series M Fixed-to-Floating Rate WMI Preferred Stock so deposited. Such Receipt or Receipts shall be registered by the Depositary or the Registrar in such name or names as may be requested by the person or persons named in the written order. The Depositary shall execute and deliver such Receipts at the Depositary's Office or such other offices, if any, as such person may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

Other than in the case of splits, combinations or other reclassifications affecting the Stock, or in the case of dividends or other distributions in the form of shares of Stock, if any, there shall be deposited with the Depositary hereunder not more than 500 shares of Series M Fixed-to-Floating Rate WMI Preferred Stock.

SECTION 2.03. Redemption of Stock. Whenever the Company shall elect to redeem shares of Series M Fixed-to-Floating Rate WMI Preferred Stock in accordance with the provisions of the Series M Amendment, it shall (unless otherwise agreed in writing with the Depositary) mail notice to the Depositary of such redemption, by first class mail, postage prepaid, not less than 40 nor more than 60 days prior to the date fixed for the redemption of the shares of such Stock in accordance with the provisions of the Series M Amendment. On the date of such redemption, provided that the Company shall then have paid in full to the Depositary the redemption price required pursuant to the Series M Amendment, and sufficient to redeem the shares of Stock to be redeemed, the Depositary shall redeem the Depositary Shares representing interests in such deposited shares of Stock. The Depositary shall mail notice of such redemption, and the simultaneous redemption of the number of Series M Depositary Shares representing interests in such deposited shares of Series M Fixed-to-Floating Rate WMI Preferred Stock, as applicable, to be redeemed, by first-class mail, postage prepaid, not less than 30 and not more than 60 days prior to the date fixed for redemption of such shares of Stock and Depositary Shares (the "Redemption Date"), to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed on the record date fixed pursuant to Section 4.04 hereof, at the addresses of such holders as they appear on the records of the Depositary; provided, however, that neither failure to mail any such notice to one or more such holders nor any defect in any notice or in the mailing thereof to one or more such holders shall affect the validity of the proceedings for redemption of any Depositary Shares as to other holders. Each such notice of redemption shall be prepared by the Company and delivered to the Depositary for subsequent delivery and shall state: (i) the Redemption Date; (ii) the number of Series M Depositary Shares representing interests in such deposited shares of Series M Fixed-to-Floating Rate WMI Preferred Stock, to be redeemed and, if less than all the Depositary Shares held by any such holder are to be redeemed,

the number of such Depositary Shares held by such holder to be so redeemed and the method by which the applicable Depositary Shares will be chosen for redemption; (iii) the redemption price (including any authorized, declared, but unpaid dividends on the Redemption Date); (iv) the place or places where Receipts evidencing the applicable Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the shares of such Stock to be redeemed, which are represented by the applicable Depositary Shares to be redeemed, will cease to accrue at the close of business on such Redemption Date. In case less than all the outstanding or Series M Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by lot or pro rata as may be determined by the Company.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to redeem the shares of Stock to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph), all dividends in respect of the shares of Stock so called for redemption shall cease to accrue, the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares, cease and terminate and, upon surrender in accordance with such notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to one-thousandth (1/1000th) of the redemption price per share paid in respect of the shares of the related Stock plus authorized, declared, but unpaid dividends on the Redemption Date and, if applicable, any money or other securities to which the holders of Receipts evidencing such Depositary Shares are entitled hereunder.

If less than all the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with the payment of the redemption price, a new Receipt evidencing the number of Series M Depositary Shares, as applicable, as were evidenced by such prior Receipt and not called for redemption; <u>provided</u>, <u>however</u>, that such replacement Receipt shall be issued only in denominations of whole Depositary Shares and cash will be payable in respect of fractional interests.

SECTION 2.04. Registration of Transfer of Receipts. Subject to the terms and conditions of this Deposit Agreement, the Registrar, on behalf of the Depositary, shall register on its books transfers of Receipts from time to time upon notice to the Registrar by the Depositary of the surrender of a Receipt for transfer by the holder in person or by duly authorized attorney, which Receipt in each case must be properly endorsed or accompanied by a properly executed instrument of transfer. Upon surrender of a properly endorsed Receipt or Receipt accompanied by an instrument of transfer, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Series M Depositary Shares, as applicable, as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the transferee named in the endorsement or instrument of transfer.

SECTION 2.05. <u>Split-Ups and Combinations of Receipts; Surrender of Receipts</u>. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and

subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts to the holder thereof or to such holder's order in the denominations requested, evidencing the aggregate number of Series M Depositary Shares, evidenced by the Receipt or Receipts surrendered. The Depositary shall give prompt notice of such action and the certificate numbers to the Registrar for the purpose of recording such split-up or consolidation.

SECTION 2.06. <u>Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts</u>. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require (i) payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to <u>Section 5.07</u>, (ii) the production of evidence satisfactory to it as to the identity and genuineness of any signature and/or (iii) compliance with the rules and regulations of any governmental body, any stock exchange or any applicable self regulatory body, including without limitation, the National Association of Securities Dealers, Inc. (the "NASD") or such other regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement.

The delivery of Receipts against the shares of Stock deposited with the Depositary may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government, governmental body or commission, stock exchange or the NASD or under any provision of this Deposit Agreement.

SECTION 2.07. Lost Receipts, Etc. If any mutilated Receipt is surrendered to the Depositary, the Depositary shall execute and deliver in exchange therefor a new Receipt of like type, form and tenor in exchange and substitution for such mutilated Receipt. In case any Receipt shall be destroyed, lost or stolen, then, in the absence of notice to the Depositary that such Receipt has been acquired by a bona fide purchaser, the Depositary shall execute and deliver a Receipt to the holder thereof of like type, form and tenor in exchange and substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to the Depositary and the Company of such destruction or loss or theft of such Receipt, of the authenticity thereof and of such holder's ownership thereof and (ii) the holder's furnishing the Depositary with indemnification satisfactory to such Depositary and the Company and (iii) payment of all applicable fees.

SECTION 2.08. <u>Cancellation and Destruction of Surrendered Receipts</u>. All Receipts surrendered to the Depositary or any Depositary's Agent shall be canceled by the Depositary. Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy all Receipts so canceled.

SECTION 2.09. Stock Purchase Plans. The Depositary shall take such reasonable action as shall be necessary or appropriate to permit the record holders of Receipts evidencing Series M Depositary Shares to participate in any dividend reinvestment or other stock purchase plan sponsored by the Company that permits the participation by such holders on such terms and conditions as the Company may determine. The Depositary shall not have to take any action under this paragraph, if such actions are unreasonable, not appropriate, or otherwise require the Depositary to take actions not in the ordinary course or if the administrator of the dividend reinvestment or other stock purchase plan has notified the Depositary that such action is not feasible or impracticable.

ARTICLE III

CERTAIN OBLIGATIONS OF THE HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.01. Filing Proofs, Certificates and Other Information. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to obtain such guaranties of signature, to execute such certificates and to make such customary representations and warranties consistent with the terms of the Stock as the Depositary or the Company may deem necessary or proper. The Depositary or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.02. Payment of Taxes or Other Governmental Charges. Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses as provided in Section 5.07, or provide evidence satisfactory to the Depositary that such charges and expenses have been paid. Registration of transfer of any Receipt and delivery of all money or other securities, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or all or any part of the shares of Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. <u>Warranty as to Stock</u>. The Company hereby represents and warrants to the Depositary that the Stock, when issued, will be validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of Receipts.

SECTION 3.04. Warranty as to this Agreement. The Depositary hereby represents and warrants that this Agreement, when issued and upon the issuance of the Receipts, will be the legal, valid and binding obligation of the Depositary, enforceable against the Depositary in accordance with its terms, except as such enforceability may be limited by applicable

bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and by general equity principles. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of the Receipts.

ARTICLE IV

THE DEPOSITED SECURITIES; NOTICES

SECTION 4.01. <u>Cash Distributions</u>. Whenever the Depositary shall receive any cash dividend or other cash distribution with respect to the Series M Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such dividend or distribution applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold any monies from any cash dividend or other cash distribution in respect of the applicable Stock on account of taxes, the distribution in respect of the applicable Depositary Shares shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any holder of a Receipt a fraction of one cent, and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next succeeding distribution to record holders of such Receipts. Each holder of a Receipt shall provide the Depositary with its certified tax identification number on a properly completed Form W-8 or W-9, as may be applicable. Each holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence the Internal Revenue Code of 1986 as amended, may require withholding by the Depositary of a portion of any of the distribution to be made hereunder.

SECTION 4.02. Distributions Other Than Cash. Whenever the Depositary shall receive any property (including securities) for distribution in a form other than cash with respect to the the Series M Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such securities received by it applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Company shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale of the securities thus received, or any part thereof. The net proceeds of any such sale shall, subject to Section 3.02, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of the applicable Receipts in accordance with the provisions of Section 4.01 for a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such securities, to require the Company to provide an opinion of counsel stating that such securities have been registered under the Securities Act or do not need to be so registered.

SECTION 4.03. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names the shares of Stock are recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of the related Receipts, pro rata in proportion to the number of the shares of the applicable Stock represented by each such Receipt, in such manner as the Company may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Company determines that it is not lawful or not feasible to make such rights, preferences or privileges available to holders of the related Receipts by the issue of warrants or otherwise, or (ii) if instructed by holders of the related Receipts (and to the extent so instructed by such holders) who do not desire to exercise such rights, preferences or privileges, then the Company, in its discretion may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, cause the Depositary to sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sales shall be distributed by the Depositary to the record holders of the related Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such rights, preferences or privileges, to require the Company to provide an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be so registered and to provide a separate fee schedule for such services.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of the applicable Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees with the Depositary that it will promptly notify the Depositary of such requirement and will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its reasonable best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any security unless and until such registration statement shall have become effective, or unless the offering and sale of such securities to holders are exempt from registration under the Securities Act and the Company shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees with the Depositary that the Company will promptly notify the Depositary of such requirement and the Company will use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

The Depositary will not be deemed to have any knowledge of any item for which it is supposed to receive notification under any Section of this Deposit Agreement unless and until it has received such notification.

SECTION 4.04. Notice of Dividends, Etc.; Fixing of Record Date for Holders of Receipts. (i) Whenever any cash dividend or other cash distribution shall become payable or any distribution of any securities shall be made, (ii) if rights, preferences or privileges shall at any time be offered with respect to the Series M Fixed-to-Floating Rate WMI Preferred Stock, (iii) whenever the Depositary shall receive notice of (a) any meeting at which holders of shares of and/or the Series M Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote or of which holders of shares of such Stock are entitled to notice, or (b) any election on the part of the Company to redeem any shares of the Series M Fixed-to-Floating Rate WMI Preferred Stock, or (iv) whenever the Company shall decide it is appropriate, the Depositary shall, in each such instance, fix a record date (which shall be the same date as the record date fixed by the Company with respect to the applicable Stock) for the determination of the holders of the related Receipts who shall be entitled hereunder to receive a distribution in respect of such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who should be entitled to receive notice of such meeting or for any other appropriate reasons.

SECTION 4.05. Voting Rights. Upon receipt of notice of any meeting at which the holders of shares of the Series M Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of the related Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, authorize the Depositary to exercise the voting rights pertaining to the number of shares of the applicable Stock represented by their related Depositary Shares (including express authority to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such authorization may be given. Upon the written request of the holders of Receipts on such record date, the Depositary shall endeavor, insofar as practicable, to vote or cause to be voted, in accordance with the instructions set forth in such requests referred to above, the votes relating to the applicable shares of Stock (or portion thereof) represented by the related Depositary Shares evidenced by all related Receipts as to which such authorization has been received. The Company hereby agrees to take all such action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such shares of Stock or cause such shares of Stock to be voted. In the absence of authorization from the holder of a Receipt, the Depositary will abstain from voting (but, at its discretion, not from appearing at any meeting with respect to the applicable Stock unless directed to the contrary by the record holders of all the related Receipts) to the extent of the shares of such Stock (or portion thereof) represented by the applicable Depositary Shares evidenced by such Receipt.

SECTION 4.06. Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, Etc. Upon any change in par or stated value, split-up, combination or any other reclassification of the Series M Fixed-to-Floating Rate WMI Preferred Stock, or upon any recapitalization, reorganization, merger, amalgamation or consolidation to which the Company is a party or sale of all or substantially all of the Company's assets, the Depositary shall upon the instructions of, the Company, and in such manner as to retain as nearly as possible the

percentage ownership interest in the applicable Stock of holders of the related Receipts immediately prior to such event, (i) make such adjustments in (a) the fraction of an interest in one share of the applicable Stock represented by one related Depositary Share and (b) the ratio of the redemption price per the related Depositary Share to the redemption price of a share of the applicable Stock, in each case as it may deem necessary to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of Stock, or of such recapitalization, reorganization, merger, amalgamation or consolidation or sale, and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the shares of Stock as new deposited securities so received in exchange for or upon conversion of or in respect of the shares of Stock. In any such case the Depositary shall, upon receipt of written request of the Company, execute and deliver additional Receipts, or may call for surrender of all outstanding applicable Receipts to be exchanged for new Receipts specifically describing such new deposited securities.

Anything to the contrary herein or in any Receipt notwithstanding, record holders of Receipts shall have the right from and after the effective date or any such change in par or stated value, split-up, combination or other reclassification of the applicable Stock or any such recapitalization, reorganization, merger, amalgamation, consolidation or sale, to the extent that holders of shares of such Stock had the right, prior to or on the applicable effective date, to convert, exchange or surrender shares of such Stock into or for other stock, securities, property or cash, to surrender the related Receipts to the Depositary with instructions to convert, exchange or surrender the shares of Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the shares of Stock represented by such Receipts has been converted or for which such shares of Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. <u>Inspection of Reports</u>. The Depositary shall make available for inspection by record holders of Receipts at the Depositary's Office, and at such other places as it may from time to time deem advisable, any reports and communications received from the Company which are received by the Depositary as the holder of shares of the applicable Stock.

SECTION 4.08. <u>List of Receipt Holders</u>. Promptly, upon request by the Company, the Depositary shall furnish to it a list, as of a specified date, of the names and addresses of all record holders, and the number of shares of Series M Fixed-to-Floating Rate WMI Preferred Stock represented by the Receipts held by such holders.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.01. Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar. Upon execution of this Deposit Agreement, the Depositary shall maintain, at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Company and the Depositary hereby appoint Mellon Investor Services LLC, as Registrar under this Deposit Agreement for registration of such Receipts or Depositary Shares in accordance with the requirements of any applicable stock exchange in which the Receipts or the Depositary Shares may be listed. Such Registrar (which may be the Depositary if so permitted by the requirements of such exchange) may be removed and a substitute Registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, the Depositary Shares or the shares of Stock are listed on one or more other stock exchanges, the Depositary will, at the request of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such shares of Stock as may be required by law or applicable stock exchange regulation.

The Registrar shall maintain books at the Depositary's Office (or at such other place as shall be approved by the Company and of which the holders of Receipts shall have reasonable notice) for the registration of transfer of Receipts, which books at all reasonable times shall be open for inspection by the record holders of the applicable Receipts; <u>provided</u>, that the exercise of such right shall be governed by the provisions of Article 6, Section 624 of the New York Business Corporation Law, as amended, or any successor provision thereto, anything herein to the contrary notwithstanding; <u>provided</u>, <u>further</u>, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts.

The Depositary may cause the Registrar to close the books with respect to any class of Receipts, at any time or from time to time, when the register of stockholders of the Company is closed with respect to the applicable Stock or when such action is deemed necessary or advisable by the Depositary, any Depositary's Agent or the Company because of any requirement of law or of any government, governmental body or commission, stock exchange or any applicable self-regulatory body, including, without limitation, the NASD, or deemed expedient by it in connection with the performance of its duties hereunder.

SECTION 5.02. Prevention or Delay by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent or the Registrar, by reason of any provision, present or future, of the Company's Articles of Incorporation, as amended (including the Series M Amendment), or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability or be subject to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement, except in case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct (which gross negligence or willful misconduct must be

determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) of the party charged with such exercise or failure to exercise.

SECTION 5.03. Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, the Company or any other person or entity other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Company shall not assume any obligation or be subject to any liability under this Deposit Agreement to holders of Receipts, other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, nonappealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything to the contrary contained herein, neither the Depositary, nor any Depositary's Agent nor any Registrar shall be liable for any special, indirect, incidental, consequential, punitive or exemplary damages, including but not limited to, lost profits, even if such person or entity alleged to be liable has knowledge of the possibility of such damages. Any liability of the Depositary and any Registrar under this Deposit Agreement will be limited to the amount of annual fees paid by the Company to the Depositary or any Registrar.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Stock, the Depositary Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to such party against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information from any person presenting shares of Stock for deposit or any holder of a Receipt. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the party or parties specified in this Deposit Agreement.

The Depositary shall not be responsible for any failure to carry out any authorization to vote any of the shares of Stock or for the manner or effect of any such vote made, as long as such action or inaction does not result from gross negligence or willful misconduct of the Depositary. The Depositary undertakes and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement. The parties hereto acknowledge that no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar. The Depositary will indemnify the Company against any liability that may arise out of acts performed or omitted by the Depositary or any Depositary's Agent due to its or their gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary, any Depositary's Agent, any Registrar and the Company may own and deal in any class of securities of the Company and its affiliates and in Receipts subject to the provisions of applicable law. The Depositary may

also act as transfer agent or registrar of any of the securities of the Company and its affiliates. In the event the Depositary, the Depositary's Agent or any Registrar believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by it pursuant to this Deposit Agreement, the Depositary, the Depositary's Agent or Registrar shall promptly notify the Company of the details of such alleged ambiguity or uncertainty, and may, in its sole discretion, refrain from taking any action, and the Depositary, the Depositary's Agent or Registrar shall be fully protected and shall incur no liability to any person from refraining from taking such action, absent gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), unless and until (i) the rights of all parties have been fully and finally adjudicated by a court of appropriate jurisdiction or (ii) the Depositary, the Depositary's Agent or Registrar receives written instructions with respect to such matter signed by the Company that eliminates such ambiguity or uncertainty to the satisfaction of the Depositary, the Depositary's Agent or Registrar.

Whenever in the performance of its duties under this Deposit Agreement, the Depositary, the Depositary's Agent or Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a certificate signed by any one of the President, any Vice President, the Treasurer or the Secretary of the Company and delivered to the Depositary; and such certificate shall be full and complete authorization and protection to the Depositary, the Depositary's Agent or Registrar and the Depositary, the Depositary's Agent or Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such certificate. The Depositary, the Depositary's Agent or Registrar shall not be liable for or by reason of any of the statements of fact or recitals contained in this Deposit Agreement or in the Receipts (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

The Depositary, the Depositary's Agent or Registrar will not be under any duty or responsibility to insure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, Stock or Depositary Shares.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

The Depositary and any Registrar hereunder:

(i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;

- (ii) shall have no obligation to make payment hereunder unless the Company shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;
- (iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;
- (iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;
- (v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Company;
- (vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;
- (vii) shall not be called upon at any time to advise any person with respect to the Depositary Shares or Receipts;
- (viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Depositary Shares or Receipts; and
- (ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.
- SECTION 5.04. Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary hereunder by notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

In case the Depositary acting hereunder shall at any time resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be an entity having its principal office

in the United States of America and having a combined capital and surplus of at least \$50,000,000 (or an affiliate of such entity). If no successor Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder and agreeing to become a party to this Deposit Agreement, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in all shares of Stock deposited with such predecessor and any monies or securities held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation or other entity into or with which the Depositary may be merged, consolidated or converted, or to which the Depositary may sell all or substantially all its assets, shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or in the name of the successor Depositary.

SECTION 5.05. Corporate Notices and Reports. The Company agrees that it will deliver to the Depositary and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address furnished to it pursuant to Section 4.08, all notices and reports (including without limitation financial statements) required by law, the rules of any national securities exchange upon which the shares of Stock, the Depositary Shares or the Receipts are listed or by the Company's Articles of Incorporation, as amended (including the Series M Amendment), to be furnished by the Company to holders of shares of the applicable Stock. Such transmission will be at the Company's expense and the Company will provide the Depositary with such number of copies of such documents as the Depositary may reasonably request.

SECTION 5.06. <u>Indemnification by the Company</u>. The Company shall indemnify the Depositary, any Depositary's Agent and any Registrar against, and hold each of them harmless from, any loss, liability, damage, cost or expense (including the costs and expenses of defending itself) which may arise out of (i) acts performed or omitted in connection with this Deposit Agreement and the Receipts (a) by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent), except for any liability arising out of gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such person or persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts or shares of Stock pursuant to the provisions hereof. The obligations of the Company set forth in this <u>Section 5.06</u> shall survive any succession of any Depositary, Registrar or Depositary's Agent.

SECTION 5.07. Charges and Expenses. The Company shall pay all charges of the Depositary in connection with the initial deposit of shares of Stock and the initial issuance of the Depositary Shares, and any redemption of shares of Stock. All other transfer and other taxes and governmental charges shall be at the expense of holders of Receipts. The Depositary may refuse to effect any transfer of a Receipt or any withdrawal of shares of Stock evidenced thereby until all such taxes and charges with respect to such Receipt or shares of Stock are paid by the holder thereof. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses, provided, however, the Depositary need not incur such charges and expenses if repayment of such amounts is not reasonably assured to it.

All other charges and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar (including, in each case, fees and expenses of counsel) incurred in the preparation, delivery, amendment, administration and execution of this Deposit Agreement and incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depositary and the Company as to the amount and nature of such charges and expenses. The Depositary shall present any statement for charges and expenses to the Company promptly, unless the Company shall agree otherwise.

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.01. Amendment. The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; provided, however, that no such amendment which shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the record holders of Receipts representing at least a majority of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby.

SECTION 6.02. <u>Termination</u>. This Deposit Agreement may be terminated by the Company or the Depositary only if (i) all outstanding Depositary Shares shall have been redeemed pursuant to <u>Section 2.03</u>, or (ii) there shall have been made a final distribution in respect of the Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the record holders of Receipts pursuant to <u>Section 4.01</u> or <u>4.02</u>, as applicable.

Whenever the Deposit Agreement is eligible to be terminated pursuant to (ii) above, the Depositary will mail notice of such termination to the record holders of all Receipts then outstanding at least 30 days prior to the date fixed in that notice for termination of the Deposit Agreement. If any Depositary Shares remain outstanding after the date of termination, the Depositary thereafter will discontinue the transfer of such Depositary Shares, will suspend the distribution of dividends to the owners thereof, and will not give any further notices (other than notice of such termination) or perform any further acts under this Deposit Agreement, except that

the Depositary will continue (i) to collect dividends on the outstanding shares of the applicable Stock and any other distributions with respect thereto and (ii) to deliver or cause to be delivered shares of such Stock, together with such dividends and distributions, or principal and interest, and the net proceeds of any sales of rights, preferences, privileges or other property (other than real property) in exchange for the Depositary Shares surrendered. At any time after the expiration of three years from the date of termination, the Depositary may (but shall not be obligated to do so) sell the shares of Stock then held by it at a public or private sale, at such place or places and upon such terms as it deems proper and may thereafter hold the net proceeds of such sale, without liability for interest, for the pro rata benefit of the owners of the related Depositary Shares, which have not theretofore been surrendered. Subject to applicable escheat laws, any monies set aside by the Company in respect of any payment with respect to the shares of the Series M Fixed-to-Floating Rate WMI Preferred Stock represented by the Series M Depositary Shares, or dividends thereon, and unclaimed at the end of three years from the date upon which such payment is due and payable shall revert to the general funds of the Company, after which reversion the holders of Receipts evidencing such Depositary Shares shall look only to the general funds of the Company for payment thereof.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary and the Depositary's Agent and any Registrar under Sections 5.03, 5.06 and 5.07.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. <u>Counterparts</u>. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.02. Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.03. <u>Invalidity of Provisions</u>. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or modified thereby.

SECTION 7.04. <u>Notices</u>. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or telegram, telecopy or telex confirmed by letter, addressed to the Company at Washington Mutual, Inc., Attention: Corporate Secretary, 1301 Second Avenue, WMC 3501, Seattle, Washington 98101, telephone: 1-206-500-4347, telecopy: 1-206-377-2236,

or at any other address and to the attention of any other person of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to the Depositary at the Depositary's Office, at Mellon Investor Services LLC, Attention: Corporate Trust Administration, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-302-651-1000, telecopy 1-302-636-4140, with a copy to Mellon Investor Services LLC, Attention: Legal Department, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-201-680-2198, telecopy: 1-201-680-4610, or at any other address and any other person of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram, telecopy or telex shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or telex message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any telegram or telecopy message received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or telecopy message shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.05. <u>Depositary's Agents</u>. The Depositary may from time to time appoint any Depositary's Agent to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate the appointment of such Depositary's Agents. The Depositary will promptly notify the Company of any such action.

SECTION 7.06. <u>Holders of Receipts are Parties</u>. By acceptance of delivery of the Receipts, any holder from time to time of such Receipt shall be deemed to have agreed to become a party to this Deposit Agreement and to be bound by all of the terms and conditions hereof and of the Receipts to the same extent as though such person executed this Deposit Agreement.

SECTION 7.07. Governing Law. THIS DEPOSIT AGREEMENT AND THE RECEIPTS AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO APPLICABLE CONFLICTS OF LAW PROVISIONS).

SECTION 7.08. <u>Inspection of Deposit Agreement</u>. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection

during business hours at the Depositary's Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.09. <u>Headings</u>. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in <u>Exhibit A</u> hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

WASHINGTON MUTUAL, INC.

By:_

Name: Peter Freilinger

Title: Senior Vice President

MELLON INVESTOR SERVICES LLC,
as Depositary
By: Mrs Seelen
Authorized Officer
MELLON INVESTOR SERVICES LLC,
as Registrar
By: See Stack
Authorized Officer

FORM OF RECEIPT

TEMPORARY RECEIPT EXCHANGEABLE FOR ENGRAVED RECEIPT WHEN READY FOR DELIVERY	CERTIFICATE FOR
	SERIES M DEPOSITARY SHARES
TRANSFERABLE DEPOSITARY RECEIPT	CUSIP
DEI OSITART RECEII I	SEE REVERSE FOR CERTAIN DEFINITIONS

DEPOSITARY RECEIPT FOR SERIES M DEPOSITARY SHARES, EACH SERIES M DEPOSITARY SHARE REPRESENTING A ONE-THOUSANDTH (1/1000TH) INTEREST IN ONE SHARE OF SERIES M PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK

WASHINGTON MUTUAL, INC. A Washington corporation

MELLON	INVESTORS SERVICES LLC, as Depositary (the "Depositary"), hereby
certifies that	

is the registered owner of SERIES M DEPOSITARY SHARES ("Series M Depositary Shares"), each Series M Depositary Share representing a one-thousandth (1/1000th) interest in one share of Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, no par value and liquidation preference \$1,000,000.00, of Washington Mutual, Inc., a Washington corporation (the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the benefits of the Deposit Agreement dated as of May 24, 2007 (the "Deposit Agreement"), among the Corporation, the Depositary, the Registrar and the holders from time to time of Depositary Receipts evidencing the Fixed-to-Floating Rate. Capitalized terms not otherwise defined herein shall have the meanings provided in the Deposit Agreement. By accepting this depositary Receipt, the holder hereof becomes a party to and agrees to be bound by all the terms and conditions of the Deposit Agreement. This Depositary Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the Deposit Agreement unless it shall have been executed by the Depositary by the manual signature of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a Registrar in respect of the depositary Receipts by a duly authorized officer thereof.

Dated:

MELLON INVESTOR SERVICES LLC

Depositary and Registrar

By:		_
Author	ized Officer	

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WASHINGTON MUTUAL, INC.

WASHINGTON MUTUAL, INC. WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF A RECEIPT WHO SO REQUESTS A COPY OR SUMMARY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE PORTIONS OF THE ARTICLES OF INCORPORATION ESTABLISHING THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS APPLICABLE TO SHARES OF EACH CLASS AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES (AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES) WHICH THE CORPORATION IS AUTHORIZED TO ISSUE, INCLUDING THE SERIES M PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK. ANY SUCH REQUEST SHOULD BE ADDRESSED TO WASHINGTON MUTUAL, INC., 1301 SECOND AVENUE, WMC 3501, SEATTLE, WASHINGTON 98101, TELEPHONE: 1-206-500-4347, TELECOPY: 1-206-377-2366, ATTENTION: CORPORATE SECRETARY.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in	n common			
TEN ENT — as tenants b	y the entireties			
JT TEN — as joint tena	ents with right of su	rvivorship a	nd not as	tenants in common
			ě	
UNIF GIFT MIN ACT—	Cust	odian		
	(Cust)	(M	inor)	
	ndar Uniform Cift	s to Minors	A at	
u	nder Uniform Gifts	s to Millors 2	ACI	(State)
				(State)
UNIF TRF MIN ACT —	Cust	odian		
UNIF TRF MIN ACT —	(Cust)	(M	inor)	
(until age) under	Uniform Tr	ansfers to	Minors Act
	(State)			·
	Additional abb		•	
For value re	ceived,		hereby	sell(s), assign(s) and transfer(s)
unto				

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DESCRIPTION OF STATE	
PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE	
LEASE PRINT OR TYPEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNE	212
LEASE PRINT OR ITTEWRITE NAME AND ADDRESS INCLUDING POSTAL ZIP CODE OF ASSIGNE	C

Depositary Shares represented by the within Receipt, and do(es) hereby irrevocably
Attorney to transfer the said Depositary Shares on the books of the within named Depositary with full power of substitution in the premises.
Dated:
NOTICE: The signature to the assignment must correspond with the name as written
upon the face of this Receipt in every particular, without alteration or enlargement or any
change whatsoever.

SIGNATURE GUARANTEED

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

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Ex. 3D

WASHINGTON MUTUAL, INC.,

MELLON INVESTOR SERVICES LLC, AS DEPOSITARY,

MELLON INVESTOR SERVICES LLC, AS REGISTRAR,

AND

THE HOLDERS FROM TIME TO TIME OF
THE RECEIPTS EVIDENCING THE SERIES N DEPOSITARY SHARES
DESCRIBED HEREIN

DEPOSIT AGREEMENT

Dated as of October 25, 2007

DEPOSIT AGREEMENT

dated as of October 25, 2007 among

WASHINGTON MUTUAL, INC., a Washington corporation,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Depositary,

MELLON INVESTOR SERVICES LLC, a New Jersey limited liability company, as Registrar,

AND THE HOLDERS FROM TIME TO TIME OF THE RECEIPTS EVIDENCING THE SERIES N DEPOSITARY SHARES DESCRIBED HEREIN

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the deposit of shares of Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, liquidation preference \$1,000,000.00 per share, of the Company (the "Series N Fixed-to-Floating Rate WMI Preferred Stock" or "Stock") with the Depositary for the purposes set forth in this Deposit Agreement and for the issuance hereunder of Receipts by the Depositary evidencing Series N Depositary Shares in respect of the Series N Fixed-to-Floating Rate WMI Preferred Stock so deposited;

WHEREAS, it is desired to provide, as hereinafter set forth in this Deposit Agreement, for the issuance hereunder of Receipts by the Depositary evidencing newly issued Series N Depositary Shares each representing a 1/1000th interest in one share of the Series N Fixed-to-Floating Rate WMI Preferred Stock so deposited (each, a "Series N Depositary Share" or a "Depositary Share").

NOW, THEREFORE, in consideration of the promises contained herein and such other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

The following definitions shall for all purposes, unless otherwise indicated, apply to the respective terms used in this Deposit Agreement (including the recitals hereto) and the Receipts:

"Company" shall mean Washington Mutual, Inc., a Washington corporation, and its successors.

"Company's Articles of Incorporation" shall mean the amended and restated articles of incorporation, as amended, of the Company.

"<u>Deposit Agreement</u>" shall mean this Deposit Agreement, as amended or supplemented from time to time in accordance with the terms hereof.

"<u>Depositary</u>" shall mean Mellon Investor Services LLC, a New Jersey limited liability company, and any successor Depositary and Registrar hereunder.

"<u>Depositary's Agent</u>" shall mean an agent appointed by the Depositary pursuant to <u>Section 7.05</u> of this Deposit Agreement.

"<u>Depositary's Office</u>" shall mean the principal office of the Depositary at which at any particular time its depositary business shall be administered.

"Exchange Agreement" shall mean that certain Exchange Agreement, dated as of October 25, 2007, by and among Washington Mutual Preferred Funding Trust IV, the Company and Mellon Investor Services LLC, as Depositary, as amended or supplemented from time to time.

"NASD" shall have the meaning assigned to it in Section 2.06 of this Deposit Agreement.

"Receipt" shall mean one of the depositary receipts, whether in definitive or temporary form, issued hereunder by the Depositary, each representing any number of whole Depositary Shares.

"record holder" with respect to a Receipt shall mean the individual, entity or person in whose name a Receipt is registered on the books of the Depositary or any register of any Registrar maintained for such purpose at a given time.

"Redemption Date" shall have the meaning assigned to it in <u>Section 2.03</u> of this Deposit Agreement.

"Registrar" shall mean (i) Mellon Investor Services LLC, as appointed by the Company and the Depositary hereunder, or (ii) in the case that Mellon Investor Services LLC is no longer the appointed Registrar hereunder, any bank or trust company that shall be appointed by the Depositary (with the approval of the Company) to register ownership and transfers of Receipts as herein provided and which may include the Depositary.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Series N Amendment" shall mean the articles of amendment to the Company's Articles of Incorporation filed with the Secretary of State of the State of Washington establishing the Series N Fixed-to-Floating Rate WMI Preferred Stock.

"Series N Depositary Shares" has the meaning specified in the recitals of this Deposit Agreement.

"Series N Fixed-to-Floating Rate WMI Preferred Stock" has the meaning specified in the recitals of this Deposit Agreement.

"Stock" has the meaning specified in the recitals of this Deposit Agreement.

ARTICLE II

FORM OF RECEIPTS; DEPOSIT OF STOCK; EXECUTION AND DELIVERY, TRANSFER, SURRENDER AND REDEMPTION OF RECEIPTS

SECTION 2.01. Form and Transfer of Receipts. The beneficial owners of Depositary Shares shall be entitled to receive Receipts in physical, certificated form as herein provided.

Definitive Receipts shall be engraved or printed or lithographed on steel-engraved borders and,

in the case of definitive Receipts representing Series N Depositary Shares shall be substantially in the form annexed hereto as Exhibit A,

in each case, with appropriate insertions, modifications and omissions, as hereinafter provided. Pending the preparation of definitive Receipts, the Depositary, upon the written order of the Company delivered in compliance with Section 2.02, shall execute and deliver temporary Receipts which shall be printed, lithographed, typewritten, mimeographed or otherwise substantially of the tenor of the definitive Receipts in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the persons executing such Receipts may determine (but which do not affect the rights or duties of the Depositary), as evidenced by their execution of such Receipts. After the preparation of definitive Receipts, the temporary Receipts shall be exchangeable for definitive Receipts upon surrender of the temporary Receipts at the Depositary's Office, without charge to the holders. Upon surrender for cancellation of any one or more temporary Receipts, the Depositary shall execute and deliver in exchange therefor definitive Receipts representing the same number of Depositary Shares as represented by the surrendered temporary Receipt or Receipts registered in the name (and only the name) of the holder of the temporary Receipt. Such exchange shall be made at the Company's expense and without any charge therefor to the holder. Until so exchanged, the temporary Receipts shall in all respects be entitled to the same benefits under this Deposit Agreement and with respect to the Stock, as definitive Receipts.

Receipts shall be executed by the Depositary by the manual signature of a duly authorized officer of the Depositary; <u>provided</u>, that such signature may be a facsimile if a Registrar for the Receipts (other than the Depositary) shall have been appointed and such Receipts are countersigned by manual signature of a duly authorized officer of the Registrar. No Receipt shall be entitled to any benefits under this Deposit Agreement or be valid or obligatory for any purpose unless it shall have been (i) executed manually by a duly authorized officer of the Depositary or (ii) executed by manual or facsimile signature of a duly authorized officer of the Depositary and countersigned manually by a duly authorized officer of a Registrar for the Receipts (other than the Depositary, if any). The Depositary shall record on its books each Receipt so signed and delivered as hereinafter provided. The manual or facsimile signatures on

the Receipts of individuals who were at any time proper officers of the Depositary or the Registrar, as the case may be, shall constitute adequate signatures hereunder, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the delivery of such Receipts or did not hold such offices on the date of delivery of such Receipts.

Receipts shall be in denominations of any number of whole Depositary Shares.

Unless the Depositary Shares and the Receipts are registered under the Securities Act, Receipts must bear the legend set forth below, and shall bear such other legends or recitals or changes not inconsistent with the provisions of this Deposit Agreement as may be required by the Depositary and approved by the Company or required to comply with any applicable law or regulation or, to the extent shares of Stock, the Depositary Shares or the Receipts are listed on any securities exchange, with the rules and regulations of any securities exchange upon which such shares of Stock, Depositary Shares or Receipts may be listed or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Receipts are subject.

THESE OFFERED SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT (I) PURSUANT TO REGISTRATION UNDER THE SECURITIES ACT OF 1933 (AS AMENDED), OR PURSUANT TO AN AVAILABLE EXEMPTION FROM REGISTRATION THEREUNDER, AND (II) IN COMPLIANCE WITH ANY APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

Subject to any limitations set forth in a Receipt or in this Deposit Agreement, title to Depositary Shares evidenced by a Receipt which is properly endorsed, or accompanied by a properly executed instrument of transfer, shall be transferable by delivery of such Receipt with the same effect as if such Receipt were a negotiable instrument; provided, however, that until transfer of a Receipt shall be registered on the books of the Registrar, on behalf of the Depositary, as provided in Section 2.04, the Depositary may, notwithstanding any notice to the contrary, treat the record holder of such Receipt as the absolute owner thereof for the purpose of determining the person entitled to distributions of dividends or other distributions with respect to the Stock or to any notice provided for in this Deposit Agreement and for all other purposes.

The Depositary shall not lend any shares of Stock deposited hereunder.

SECTION 2.02. Deposit of Stock; Execution and Delivery of Receipts in Respect Thereof. Subject to the terms and conditions of the Exchange Agreement and this Deposit Agreement, the Company may from time to time deposit shares of Stock with the Depositary under this Deposit Agreement by delivery to the Depositary of a certificate or certificates representing the shares of Stock to be deposited. Such certificate or certificates representing the shares of Stock shall be (i) properly endorsed or, if required by the Depositary, accompanied by a duly executed instrument of transfer or endorsement, in form satisfactory to the Depositary, together with all such certifications as may be required by the Depositary in accordance with the provisions of this Deposit Agreement, and (ii) accompanied by a written order of the Company directing the Depositary to execute and deliver to the person or persons named in such order a

Receipt or Receipts evidencing in the aggregate, and the number of Series N Depositary Shares representing interests in such deposited shares of Series N Fixed-to-Floating Rate WMI Preferred Stock.

All shares of Stock deposited by the Company with the Depositary shall be held by the Depositary at the Depositary's Office or at such other place or places as the Depositary shall determine.

Upon receipt by the Depositary of a certificate or certificates representing shares of Stock deposited with the Depositary by the Company in accordance with the provisions of this Section 2.02, together with the other documents required as above specified, and upon recordation of the shares of Stock so deposited on the books of the Company in the name of the Depositary or its nominee, the Depositary, subject to the terms and conditions of this Deposit Agreement, shall execute and deliver, to the person or persons named in the written order delivered to the Depositary, a Receipt or Receipts, evidencing in the aggregate the number of Series N Depositary Shares representing interests in the shares of Series N Fixed-to-Floating Rate WMI Preferred Stock so deposited. Such Receipt or Receipts shall be registered by the Depositary or the Registrar in such name or names as may be requested by the person or persons named in the written order. The Depositary shall execute and deliver such Receipts at the Depositary's Office or such other offices, if any, as such person may designate. Delivery at other offices shall be at the risk and expense of the person requesting such delivery.

Other than in the case of splits, combinations or other reclassifications affecting the Stock, or in the case of dividends or other distributions in the form of shares of Stock, if any, there shall be deposited with the Depositary hereunder not more than one thousand shares of Series N Fixed-to-Floating Rate WMI Preferred Stock.

SECTION 2.03. Redemption of Stock. Whenever the Company shall elect to redeem shares of Series N Fixed-to-Floating Rate WMI Preferred Stock in accordance with the provisions of the Series N Amendment, it shall (unless otherwise agreed in writing with the Depositary) mail notice to the Depositary of such redemption, by first class mail, postage prepaid, not less than 40 nor more than 60 days prior to the date fixed for the redemption of the shares of such Stock in accordance with the provisions of the Series N Amendment. On the date of such redemption, provided that the Company shall then have paid in full to the Depositary the redemption price required pursuant to the Series N Amendment, and sufficient to redeem the shares of Stock to be redeemed, the Depositary shall redeem the Depositary Shares representing interests in such deposited shares of Stock. The Depositary shall mail notice of such redemption, and the simultaneous redemption of the number of Series N Depositary Shares representing interests in such deposited shares of Series N Fixed-to-Floating Rate WMI Preferred Stock, as applicable, to be redeemed, by first-class mail, postage prepaid, not less than 30 and not more than 60 days prior to the date fixed for redemption of such shares of Stock and Depositary Shares (the "Redemption Date"), to the record holders of the Receipts evidencing the Depositary Shares to be so redeemed on the record date fixed pursuant to Section 4.04 hereof, at the addresses of such holders as they appear on the records of the Depositary; provided, however, that neither failure to mail any such notice to one or more such holders nor any defect in any notice or in the mailing thereof to one or more such holders shall affect the validity of the proceedings for redemption of any Depositary Shares as to other holders. Each such notice of redemption shall

be prepared by the Company and delivered to the Depositary for subsequent delivery and shall state: (i) the Redemption Date; (ii) the number of Series N Depositary Shares representing interests in such deposited shares of Series N Fixed-to-Floating Rate WMI Preferred Stock, to be redeemed and, if less than all the Depositary Shares held by any such holder are to be redeemed, the number of such Depositary Shares held by such holder to be so redeemed and the method by which the applicable Depositary Shares will be chosen for redemption; (iii) the redemption price (including any authorized, declared, but unpaid dividends on the Redemption Date); (iv) the place or places where Receipts evidencing the applicable Depositary Shares are to be surrendered for payment of the redemption price; and (v) that dividends in respect of the shares of such Stock to be redeemed, which are represented by the applicable Depositary Shares to be redeemed, will cease to accrue at the close of business on such Redemption Date. In case less than all the outstanding or Series N Depositary Shares are to be redeemed, the Depositary Shares to be so redeemed shall be selected by lot or pro rata as may be determined by the Company.

Notice having been mailed by the Depositary as aforesaid, from and after the Redemption Date (unless the Company shall have failed to redeem the shares of Stock to be redeemed by it as set forth in the Company's notice provided for in the preceding paragraph), all dividends in respect of the shares of Stock so called for redemption shall cease to accrue, the Depositary Shares being redeemed from such proceeds shall be deemed no longer to be outstanding, all rights of the holders of Receipts evidencing such Depositary Shares (except the right to receive the redemption price) shall, to the extent of such Depositary Shares, cease and terminate and, upon surrender in accordance with such notice of the Receipts evidencing any such Depositary Shares called for redemption (properly endorsed or assigned for transfer, if the Depositary shall so require), such Depositary Shares shall be redeemed by the Depositary at a redemption price per Depositary Share equal to one-thousandth (1/1000th) of the redemption price per share paid in respect of the shares of the related Stock plus authorized, declared, but unpaid dividends on the Redemption Date and, if applicable, any money or other securities to which the holders of Receipts evidencing such Depositary Shares are entitled hereunder.

If less than all the Depositary Shares evidenced by a Receipt are called for redemption, the Depositary will deliver to the holder of such Receipt upon its surrender to the Depositary, together with the payment of the redemption price, a new Receipt evidencing the number of Series N Depositary Shares, as applicable, as were evidenced by such prior Receipt and not called for redemption; <u>provided</u>, <u>however</u>, that such replacement Receipt shall be issued only in denominations of whole Depositary Shares and cash will be payable in respect of fractional interests.

SECTION 2.04. Registration of Transfer of Receipts. Subject to the terms and conditions of this Deposit Agreement, the Registrar, on behalf of the Depositary, shall register on its books transfers of Receipts from time to time upon notice to the Registrar by the Depositary of the surrender of a Receipt for transfer by the holder in person or by duly authorized attorney, which Receipt in each case must be properly endorsed or accompanied by a properly executed instrument of transfer. Upon surrender of a properly endorsed Receipt or Receipt accompanied by an instrument of transfer, the Depositary shall execute a new Receipt or Receipts evidencing the same aggregate number of Series N Depositary Shares, as applicable, as those evidenced by the Receipt or Receipts surrendered and deliver such new Receipt or Receipts to or upon the order of the transferee named in the endorsement or instrument of transfer.

SECTION 2.05. Split-Ups and Combinations of Receipts; Surrender of Receipts. Upon surrender of a Receipt or Receipts at the Depositary's Office or at such other offices as it may designate for the purpose of effecting a split-up or combination of such Receipt or Receipts, and subject to the terms and conditions of this Deposit Agreement, the Depositary shall execute and deliver a new Receipt or Receipts to the holder thereof or to such holder's order in the denominations requested, evidencing the aggregate number of Series N Depositary Shares, evidenced by the Receipt or Receipts surrendered. The Depositary shall give prompt notice of such action and the certificate numbers to the Registrar for the purpose of recording such split-up or consolidation.

SECTION 2.06. <u>Limitations on Execution and Delivery, Transfer, Surrender and Exchange of Receipts</u>. As a condition precedent to the execution and delivery, registration of transfer, split-up, combination, surrender or exchange of any Receipt, the Depositary, any of the Depositary's Agents or the Company may require (i) payment to it of a sum sufficient for the payment (or, in the event that the Depositary or the Company shall have made such payment, the reimbursement to it) of any charges or expenses payable by the holder of a Receipt pursuant to Section 5.07, (ii) the production of evidence satisfactory to it as to the identity and genuineness of any signature and/or (iii) compliance with the rules and regulations of any governmental body, any stock exchange or any applicable self regulatory body, including without limitation, the National Association of Securities Dealers, Inc. (the "NASD") or such other regulations, if any, as the Depositary or the Company may establish consistent with the provisions of this Deposit Agreement.

The delivery of Receipts against the shares of Stock deposited with the Depositary may be suspended, the registration of transfer of Receipts may be refused and the registration of transfer, surrender or exchange of outstanding Receipts may be suspended (i) during any period when the register of stockholders of the Company is closed or (ii) if any such action is deemed necessary or advisable by the Depositary, any of the Depositary's Agents or the Company at any time or from time to time because of any requirement of law or of any government, governmental body or commission, stock exchange or the NASD or under any provision of this Deposit Agreement.

SECTION 2.07. Lost Receipts, Etc. If any mutilated Receipt is surrendered to the Depositary, the Depositary shall execute and deliver in exchange therefor a new Receipt of like type, form and tenor in exchange and substitution for such mutilated Receipt. In case any Receipt shall be destroyed, lost or stolen, then, in the absence of notice to the Depositary that such Receipt has been acquired by a bona fide purchaser, the Depositary shall execute and deliver a Receipt to the holder thereof of like type, form and tenor in exchange and substitution for such destroyed, lost or stolen Receipt, upon (i) the filing by the holder thereof with the Depositary of evidence satisfactory to the Depositary and the Company of such destruction or loss or theft of such Receipt, of the authenticity thereof and of such holder's ownership thereof and (ii) the holder's furnishing the Depositary with indemnification satisfactory to such Depositary and the Company and (iii) payment of all applicable fees.

SECTION 2.08. <u>Cancellation and Destruction of Surrendered Receipts</u>. All Receipts surrendered to the Depositary or any Depositary's Agent shall be canceled by the Depositary.

Except as prohibited by applicable law or regulation, the Depositary is authorized to destroy all Receipts so canceled.

SECTION 2.09. Stock Purchase Plans. The Depositary shall take such reasonable action as shall be necessary or appropriate to permit the record holders of Receipts evidencing Series N Depositary Shares to participate in any dividend reinvestment or other stock purchase plan sponsored by the Company that permits the participation by such holders on such terms and conditions as the Company may determine. The Depositary shall not have to take any action under this paragraph, if such actions are unreasonable, not appropriate, or otherwise require the Depositary to take actions not in the ordinary course or if the administrator of the dividend reinvestment or other stock purchase plan has notified the Depositary that such action is not feasible or is impracticable.

ARTICLE III

CERTAIN OBLIGATIONS OF THE HOLDERS OF RECEIPTS AND THE COMPANY

SECTION 3.01. Filing Proofs, Certificates and Other Information. Any holder of a Receipt may be required from time to time to file such proof of residence, or other matters or other information, to obtain such guaranties of signature, to execute such certificates and to make such customary representations and warranties consistent with the terms of the Stock as the Depositary or the Company may deem necessary or proper. The Depositary or the Company may withhold the delivery, or delay the registration of transfer, redemption or exchange, of any Receipt or the distribution of any dividend or other distribution or the sale of any rights or of the proceeds thereof until such proof or other information is filed or such certificates are executed or such representations and warranties are made.

SECTION 3.02. Payment of Taxes or Other Governmental Charges. Holders of Receipts shall be obligated to make payments to the Depositary of certain charges and expenses as provided in Section 5.07, or provide evidence satisfactory to the Depositary that such charges and expenses have been paid. Registration of transfer of any Receipt and delivery of all money or other securities, if any, represented by the Depositary Shares evidenced by such Receipt may be refused until any such payment due is made, and any dividends, interest payments or other distributions may be withheld or all or any part of the shares of Stock or other property represented by the Depositary Shares evidenced by such Receipt and not theretofore sold may be sold for the account of the holder thereof (after attempting by reasonable means to notify such holder prior to such sale), and such dividends, interest payments or other distributions or the proceeds of any such sale may be applied to any payment of such charges or expenses, the holder of such Receipt remaining liable for any deficiency.

SECTION 3.03. <u>Warranty as to Stock</u>. The Company hereby represents and warrants to the Depositary that the Stock, if and when issued, will be validly issued, fully paid and nonassessable. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of Receipts.

SECTION 3.04. Warranty as to this Agreement. The Depositary hereby represents and warrants that this Agreement, when executed and upon the issuance of the Receipts, will be the legal, valid and binding obligation of the Depositary, enforceable against the Depositary in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally and by general equity principles. Such representation and warranty shall survive the deposit of shares of Stock and the issuance of the Receipts.

ARTICLE IV

THE DEPOSITED SECURITIES: NOTICES

SECTION 4.01. Cash Distributions. Whenever the Depositary shall receive any cash dividend or other cash distribution with respect to the Series N Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to Section 3.02, distribute to record holders of the applicable Receipts on the record date fixed pursuant to Section 4.04 the pro rata portion, as nearly as practicable, of such dividend or distribution applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders; provided, however, that in case the Company or the Depositary shall be required to withhold and shall withhold any monies from any cash dividend or other cash distribution in respect of the applicable Stock on account of taxes, the distribution in respect of the applicable Depositary Shares shall be reduced accordingly. The Depositary shall distribute or make available for distribution, as the case may be, only such amount, however, as can be distributed without attributing to any holder of a Receipt a fraction of one cent, and any balance not so distributable shall be held by the Depositary (without liability for interest thereon) and shall be added to and be treated as part of the next succeeding distribution to record holders of such Receipts. Each holder of a Receipt shall provide the Depositary with its certified tax identification number on a properly completed Form W-8 or W-9, as may be applicable. Each holder of a Receipt acknowledges that, in the event of non-compliance with the preceding sentence the Internal Revenue Code of 1986 as amended, may require withholding by the Depositary of a portion of any of the distribution to be made hereunder.

SECTION 4.02. <u>Distributions Other Than Cash</u>. Whenever the Depositary shall receive any property (including securities) for distribution in a form other than cash with respect to the the Series N Fixed-to-Floating Rate WMI Preferred Stock, the Depositary shall, subject to <u>Section 3.02</u>, distribute to record holders of the applicable Receipts on the record date fixed pursuant to <u>Section 4.04</u> the pro rata portion, as nearly as practicable, of such securities received by it applicable to the number of the applicable Depositary Shares evidenced by the Receipts held by such holders, in any manner that the Depositary may deem equitable and practicable for accomplishing such distribution. If in the opinion of the Depositary such distribution cannot be made proportionately among such record holders, or if for any other reason (including any requirement that the Company or the Depositary withhold an amount on account of taxes) the Depositary deems, after consultation with the Company, such distribution not to be feasible, the Company shall adopt such method as it deems equitable and practicable for the purpose of effecting such distribution, including the sale of the securities thus received, or any part thereof. The net proceeds of any such sale shall, subject to <u>Section 3.02</u>, be distributed or made available for distribution, as the case may be, by the Depositary to record holders of the applicable

Receipts in accordance with the provisions of <u>Section 4.01</u> for a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such securities, to require the Company to provide an opinion of counsel stating that such securities have been registered under the Securities Act or do not need to be so registered.

SECTION 4.03. Subscription Rights, Preferences or Privileges. If the Company shall at any time offer or cause to be offered to the persons in whose names the shares of Stock are recorded on the books of the Company any rights, preferences or privileges to subscribe for or to purchase any securities or any rights, preferences or privileges of any other nature, such rights, preferences or privileges shall in each such instance be made available by the Depositary to the record holders of the related Receipts, pro rata in proportion to the number of the shares of the applicable Stock represented by each such Receipt, in such manner as the Company may determine, either by the issue to such record holders of warrants representing such rights, preferences or privileges; provided, however, that (i) if at the time of issue or offer of any such rights, preferences or privileges the Company determines that it is not lawful or not feasible to make such rights, preferences or privileges available to holders of the related Receipts by the issue of warrants or otherwise, or (ii) if instructed by holders of the related Receipts (and to the extent so instructed by such holders) who do not desire to exercise such rights, preferences or privileges, then the Company, in its discretion may, if applicable laws or the terms of such rights, preferences or privileges permit such transfer, cause the Depositary to sell such rights, preferences or privileges at public or private sale, at such place or places and upon such terms as it may deem proper. The net proceeds of any such sales shall be distributed by the Depositary to the record holders of the related Receipts entitled thereto as provided by Section 4.01 in the case of a distribution received in cash. The Depositary shall have the right, prior to making any distribution of such rights, preferences or privileges, to require the Company to provide an opinion of counsel stating that such rights, preferences or privileges have been registered under the Securities Act or do not need to be so registered and to provide a separate fee schedule for such services.

If registration under the Securities Act of the securities to which any rights, preferences or privileges relate is required in order for holders of the applicable Receipts to be offered or sold the securities to which such rights, preferences or privileges relate, the Company agrees with the Depositary that it will promptly notify the Depositary of such requirement and will file promptly a registration statement pursuant to the Securities Act with respect to such rights, preferences or privileges and securities and use its reasonable best efforts and take all steps available to it to cause such registration statement to become effective sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges. In no event shall the Depositary make available to the holders of Receipts any right, preference or privilege to subscribe for or to purchase any security unless and until such registration statement shall have become effective, or unless the offering and sale of such securities to holders are exempt from registration under the Securities Act and the Company shall have provided to the Depositary an opinion of counsel to such effect.

If any other action under the laws of any jurisdiction or any governmental or administrative authorization, consent or permit is required in order for such rights, preferences or privileges to be made available to holders of Receipts, the Company agrees with the Depositary that the Company will promptly notify the Depositary of such requirement and the Company will

use its best efforts to take such action or obtain such authorization, consent or permit sufficiently in advance of the expiration of such rights, preferences or privileges to enable such holders to exercise such rights, preferences or privileges.

The Depositary will not be deemed to have any knowledge of any item for which it is supposed to receive notification under any Section of this Deposit Agreement unless and until it has received such notification.

SECTION 4.04. Notice of Dividends, Etc.; Fixing of Record Date for Holders of Receipts. (i) Whenever any cash dividend or other cash distribution shall become payable or any distribution of any securities shall be made with respect to the Series N Fixed-to-Floating Rate WMI Preferred Stock, (ii) if rights, preferences or privileges shall at any time be offered with respect to the Series N Fixed-to-Floating Rate WMI Preferred Stock, (iii) whenever the Depositary shall receive notice of (a) any meeting at which holders of shares of and/or the Series N Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote or of which holders of shares of such Stock are entitled to notice, or (b) any election on the part of the Company to redeem any shares of the Series N Fixed-to-Floating Rate WMI Preferred Stock, or (iv) whenever the Company shall decide it is appropriate, the Depositary shall, in each such instance, fix a record date (which shall be the same date as the record date fixed by the Company with respect to the applicable Stock) for the determination of the holders of the related Receipts who shall be entitled hereunder to receive a distribution in respect of such dividend, distribution, rights, preferences or privileges or the net proceeds of the sale thereof, or to give instructions for the exercise of voting rights at any such meeting, or who should be entitled to receive notice of such meeting or for any other appropriate reasons.

SECTION 4.05. Voting Rights. Upon receipt of notice of any meeting at which the holders of shares of the Series N Fixed-to-Floating Rate WMI Preferred Stock are entitled to vote, the Depositary shall, as soon as practicable thereafter, mail to the record holders of the related Receipts a notice which shall contain (i) such information as is contained in such notice of meeting and (ii) a statement that the holders may, subject to any applicable restrictions, authorize the Depositary to exercise the voting rights pertaining to the number of shares of the applicable Stock represented by their related Depositary Shares (including express authority to give a discretionary proxy to a person designated by the Company) and a brief statement as to the manner in which such authorization may be given. Upon the written request of the holders of Receipts on such record date, the Depositary shall endeavor, insofar as practicable, to vote or cause to be voted, in accordance with the instructions set forth in such requests referred to above, the votes relating to the applicable shares of Stock (or portion thereof) represented by the related Depositary Shares evidenced by all related Receipts as to which such authorization has been received. The Company hereby agrees to take all such action which may be deemed necessary by the Depositary in order to enable the Depositary to vote such shares of Stock or cause such shares of Stock to be voted. In the absence of authorization from the holder of a Receipt, the Depositary will abstain from voting (but, at its discretion, not from appearing at any meeting with respect to the applicable Stock unless directed to the contrary by the record holders of all the related Receipts) to the extent of the shares of such Stock (or portion thereof) represented by the applicable Depositary Shares evidenced by such Receipt.

SECTION 4.06. Changes Affecting Deposited Securities and Reclassifications, Recapitalizations, Etc. Upon any change in par or stated value, split-up, combination or any other reclassification of the Series N Fixed-to-Floating Rate WMI Preferred Stock, or upon any recapitalization, reorganization, merger, amalgamation or consolidation to which the Company is a party or sale of all or substantially all of the Company's assets, the Depositary shall upon the instructions of, the Company, and in such manner as to retain as nearly as possible the percentage ownership interest in the applicable Stock of holders of the related Receipts immediately prior to such event, (i) make such adjustments in (a) the fraction of an interest in one share of the applicable Stock represented by one related Depositary Share and (b) the ratio of the redemption price per the related Depositary Share to the redemption price of a share of the applicable Stock, in each case as it may deem necessary to reflect the effects of such change in par or stated value, split-up, combination or other reclassification of Stock, or of such recapitalization, reorganization, merger, amalgamation or consolidation or sale, and (ii) treat any securities which shall be received by the Depositary in exchange for or upon conversion of or in respect of the shares of Stock as new deposited securities so received in exchange for or upon conversion of or in respect of the shares of Stock. In any such case the Depositary shall, upon receipt of written request of the Company, execute and deliver additional Receipts, or may call for surrender of all outstanding applicable Receipts to be exchanged for new Receipts specifically describing such new deposited securities.

Anything to the contrary herein or in any Receipt notwithstanding, record holders of Receipts shall have the right from and after the effective date or any such change in par or stated value, split-up, combination or other reclassification of the applicable Stock or any such recapitalization, reorganization, merger, amalgamation, consolidation or sale, to the extent that holders of shares of such Stock had the right, prior to or on the applicable effective date, to convert, exchange or surrender shares of such Stock into or for other stock, securities, property or cash, to surrender the related Receipts to the Depositary with instructions to convert, exchange or surrender the shares of Stock represented thereby only into or for, as the case may be, the kind and amount of shares of stock and other securities and property and cash into which the shares of Stock represented by such Receipts has been converted or for which such shares of Stock might have been exchanged or surrendered immediately prior to the effective date of such transaction.

SECTION 4.07. <u>Inspection of Reports</u>. The Depositary shall make available for inspection by record holders of Receipts at the Depositary's Office, and at such other places as it may from time to time deem advisable, any reports and communications received from the Company which are received by the Depositary as the holder of shares of the applicable Stock.

SECTION 4.08. <u>List of Receipt Holders</u>. Promptly, upon request by the Company, the Depositary shall furnish to it a list, as of a specified date, of the names and addresses of all record holders, and the number of shares of Series N Fixed-to-Floating Rate WMI Preferred Stock represented by the Receipts held by such holders.

ARTICLE V

THE DEPOSITARY, THE DEPOSITARY'S AGENTS, THE REGISTRAR AND THE COMPANY

SECTION 5.01. Maintenance of Offices, Agencies and Transfer Books by the Depositary; Registrar. Upon execution of this Deposit Agreement, the Depositary shall maintain, at the Depositary's Office, facilities for the execution and delivery, registration and registration of transfer, surrender and exchange of Receipts, and at the offices of the Depositary's Agents, if any, facilities for the delivery, registration of transfer, surrender and exchange of Receipts, all in accordance with the provisions of this Deposit Agreement.

The Company and the Depositary hereby appoint Mellon Investor Services LLC, as Registrar under this Deposit Agreement for registration of such Receipts or Depositary Shares in accordance with the requirements of any applicable stock exchange on which the Receipts or the Depositary Shares may be listed. Such Registrar (which may be the Depositary if so permitted by the requirements of such exchange) may be removed and a substitute Registrar appointed by the Depositary upon the request or with the approval of the Company. If the Receipts, the Depositary Shares or the shares of Stock are listed on one or more other stock exchanges, the Depositary will, at the request of the Company, arrange such facilities for the delivery, registration, registration of transfer, surrender and exchange of such Receipts, such Depositary Shares or such shares of Stock as may be required by law or applicable stock exchange regulation.

The Registrar shall maintain books at the Depositary's Office (or at such other place as shall be approved by the Company and of which the holders of Receipts shall have reasonable notice) for the registration of transfer of Receipts, which books at all reasonable times shall be open for inspection by the record holders of the applicable Receipts; provided, that the exercise of such right shall be governed by the provisions of Article 6, Section 624 of the New York Business Corporation Law, as amended, or any successor provision thereto, anything herein to the contrary notwithstanding; provided, further, that any such holder requesting to exercise such right shall certify to the Depositary that such inspection shall be for a proper purpose reasonably related to such person's interest as an owner of Depositary Shares evidenced by the Receipts.

The Depositary may cause the Registrar to close the books with respect to any class of Receipts, at any time or from time to time, when the register of stockholders of the Company is closed with respect to the applicable Stock or when such action is deemed necessary or advisable by the Depositary, any Depositary's Agent or the Company because of any requirement of law or of any government, governmental body or commission, stock exchange or any applicable self-regulatory body, including, without limitation, the NASD, or deemed expedient by it in connection with the performance of its duties hereunder.

SECTION 5.02. Prevention or Delay by the Depositary, the Depositary's Agents, the Registrar or the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall incur any liability to any holder of any Receipt if by reason of any provision of any present or future law, or regulation thereunder, of the United States of America or of any other governmental authority or, in the case of the Depositary, the Depositary's Agent

or the Registrar, by reason of any provision, present or future, of the Company's Articles of Incorporation, as amended (including the Series N Amendment), or by reason of any act of God or war or other circumstance beyond the control of the relevant party, the Depositary, the Depositary's Agent, the Registrar or the Company shall be prevented or forbidden from doing or performing any act or thing which the terms of this Deposit Agreement provide shall be done or performed; nor shall the Depositary, any Depositary's Agent, any Registrar or the Company incur any liability or be subject to any holder of a Receipt (i) by reason of any nonperformance or delay, caused as aforesaid, in the performance of any act or thing which the terms of this Deposit Agreement provide shall or may be done or performed, or (ii) by reason of any exercise of, or failure to exercise, any discretion provided for in this Deposit Agreement, except in case of any such exercise or failure to exercise discretion not caused as aforesaid, if caused by the gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) of the party charged with such exercise or failure to exercise.

SECTION 5.03. Obligations of the Depositary, the Depositary's Agents, the Registrar and the Company. Neither the Depositary nor any Depositary's Agent nor any Registrar assumes any obligation or shall be subject to any liability under this Deposit Agreement to holders of Receipts, the Company or any other person or entity other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Company shall not assume any obligation or be subject to any liability under this Deposit Agreement to holders of Receipts, other than for its gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, nonappealable order, judgment, decree or ruling of a court of competent jurisdiction). Notwithstanding anything to the contrary contained herein, neither the Depositary, nor any Depositary's Agent nor any Registrar shall be liable for any special, indirect, incidental, consequential, punitive or exemplary damages, including but not limited to, lost profits, even if such person or entity alleged to be liable has knowledge of the possibility of such damages. Any liability of the Depositary and any Registrar under this Deposit Agreement will be limited to the amount of annual fees paid by the Company to the Depositary or any Registrar.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be under any obligation to appear in, prosecute or defend any action, suit or other proceeding in respect of the Stock, the Depositary Shares or the Receipts which in its opinion may involve it in expense or liability unless indemnity satisfactory to such party against all expense and liability be furnished as often as may be required.

Neither the Depositary nor any Depositary's Agent nor any Registrar nor the Company shall be liable for any action or any failure to act by it in reliance upon the advice of legal counsel or accountants, or information from any person presenting shares of Stock for deposit or any holder of a Receipt. The Depositary, any Depositary's Agent, any Registrar and the Company may each rely and shall each be protected in acting upon any written notice, request, direction or other document believed by it to be genuine and to have been signed or presented by the party or parties specified in this Deposit Agreement.

The Depositary shall not be responsible for any failure to carry out any authorization to vote any of the shares of Stock or for the manner or effect of any such vote made, as long as such action or inaction does not result from gross negligence or willful misconduct of the Depositary. The Depositary undertakes and any Registrar shall be required to undertake, to perform such duties and only such duties as are specifically set forth in this Deposit Agreement. The parties hereto acknowledge that no implied covenants or obligations shall be read into this Deposit Agreement against the Depositary or any Registrar. The Depositary will indemnify the Company against any liability that may arise out of acts performed or omitted by the Depositary or any Depositary's Agent due to its or their gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction). The Depositary, any Depositary's Agent, any Registrar and the Company may own and deal in any class of securities of the Company and its affiliates and in Receipts subject to the provisions of applicable law. The Depositary may also act as transfer agent or registrar of any of the securities of the Company and its affiliates. In the event the Depositary, the Depositary's Agent or any Registrar believes any ambiguity or uncertainty exists in any notice, instruction, direction, request or other communication, paper or document received by it pursuant to this Deposit Agreement, the Depositary's Agent or Registrar shall promptly notify the Company of the details of such alleged ambiguity or uncertainty, and may, in its sole discretion, refrain from taking any action, and the Depositary, the Depositary's Agent or Registrar shall be fully protected and shall incur no liability to any person from refraining from taking such action, absent gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction), unless and until (i) the rights of all parties have been fully and finally adjudicated by a court of appropriate jurisdiction or (ii) the Depositary, the Depositary's Agent or Registrar receives written instructions with respect to such matter signed by the Company that eliminates such ambiguity or uncertainty to the satisfaction of the Depositary, the Depositary's Agent or Registrar.

Whenever in the performance of its duties under this Deposit Agreement, the Depositary, the Depositary's Agent or Registrar shall deem it necessary or desirable that any fact or matter be proved or established by the Company prior to taking, suffering or omitting to take any action hereunder, such fact or matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively provided and established by a certificate signed by any one of the President, any Vice President, the Treasurer or the Secretary of the Company and delivered to the Depositary; and such certificate shall be full and complete authorization and protection to the Depositary, the Depositary's Agent or Registrar and the Depositary, the Depositary's Agent or Registrar shall incur no liability for or in respect of any action taken, suffered or omitted by it under the provisions of this Deposit Agreement in reliance upon such certificate. The Depositary, the Depositary's Agent or Registrar shall not be liable for or by reason of any of the statements of fact or recitals contained in this Deposit Agreement or in the Receipts (except its countersignature thereof) or be required to verify the same, but all such statements and recitals are and shall be deemed to have been made by the Company only.

The Depositary, the Depositary's Agent or Registrar will not be under any duty or responsibility to insure compliance with any applicable federal or state securities laws in connection with the issuance, transfer or exchange of the Receipts, Stock or Depositary Shares.

It is intended that neither the Depositary nor any Depositary's Agent shall be deemed to be an "issuer" of the securities under the federal securities laws or applicable state securities laws, it being expressly understood and agreed that the Depositary and any Depositary's Agent are acting only in a ministerial capacity as Depositary for the deposited Preferred Shares; provided, however, that the Depositary agrees to comply with all information reporting and withholding requirements applicable to it under law or this Deposit Agreement in its capacity as Depositary.

The Depositary and any Registrar hereunder:

- (i) shall have no duties or obligations other than those specifically set forth herein (and no implied duties or obligations), or as may subsequently be agreed to in writing by the parties;
- (ii) shall have no obligation to make payment hereunder unless the Company shall have provided the necessary federal or other immediately available funds or securities or property, as the case may be, to pay in full amounts due and payable with respect thereto;
- (iii) shall not be obligated to take any legal or other action hereunder; if, however, the Depositary determines to take any legal or other action hereunder, and, where the taking of such action might in the Depositary's judgment subject or expose it to any expense or liability, the Depositary shall not be required to act unless it shall have been furnished with an indemnity satisfactory to it;
- (iv) may rely on and shall be authorized and protected in acting or failing to act upon any certificate, instrument, opinion, notice, letter, telegram, telex, facsimile transmission or other document or security delivered to the Depositary and believed by the Depositary to be genuine and to have been signed by the proper party or parties, and shall have no responsibility for determining the accuracy thereof;
- (v) may rely on and shall be authorized and protected in acting or failing to act upon the written, telephonic, electronic and oral instructions, with respect to any matter relating to the Depositary's actions as depositary covered by this Deposit Agreement (or supplementing or qualifying any such actions) of officers of the Company;
- (vi) may consult counsel satisfactory to it, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in accordance with the advice of such counsel;
- (vii) shall not be called upon at any time to advise any person with respect to the Depositary Shares or Receipts;
- (viii) shall not be liable or responsible for any recital or statement contained in any documents relating hereto or the Depositary Shares or Receipts; and
- (ix) shall not be liable in any respect on account of the identity, authority or rights of the parties (other than with respect to the Depositary) executing or delivering or

purporting to execute or deliver this Deposit Agreement or any documents or papers deposited or called for under this Deposit Agreement.

SECTION 5.04. Resignation and Removal of the Depositary; Appointment of Successor Depositary. The Depositary may at any time resign as Depositary hereunder by notice of its election so to do delivered to the Company, such resignation to take effect upon the appointment of a successor depositary and its acceptance of such appointment as hereinafter provided.

The Depositary may at any time be removed by the Company by notice of such removal delivered to the Depositary, such removal to take effect upon the appointment of a successor Depositary and its acceptance of such appointment as hereinafter provided.

In case the Depositary acting hereunder shall at any time resign or be removed, the Company shall, within 60 days after the delivery of the notice of resignation or removal, as the case may be, appoint a successor Depositary, which shall be an entity having its principal office in the United States of America and having a combined capital and surplus of at least \$50,000,000 (or an affiliate of such entity). If no successor Depositary shall have been so appointed and have accepted appointment within 60 days after delivery of such notice, the resigning or removed Depositary may petition any court of competent jurisdiction for appointment of a successor Depositary. Every successor Depositary shall execute and deliver to its predecessor and to the Company an instrument in writing accepting its appointment hereunder and agreeing to become a party to this Deposit Agreement, and thereupon such successor Depositary, without any further act or deed, shall become fully vested with all the rights, powers, duties and obligations of its predecessor and for all purposes shall be the Depositary under this Deposit Agreement, and such predecessor, upon payment of all sums due it and on the written request of the Company, shall execute and deliver an instrument transferring to such successor all rights and powers of such predecessor hereunder, shall duly assign, transfer and deliver all right, title and interest in all shares of Stock deposited with such predecessor and any monies or securities held hereunder to such successor and shall deliver to such successor a list of the record holders of all outstanding Receipts. Any successor Depositary shall promptly mail notice of its appointment to the record holders of Receipts.

Any corporation or other entity into or with which the Depositary may be merged, consolidated or converted, or to which the Depositary may sell all or substantially all its assets, shall be the successor of such Depositary without the execution or filing of any document or any further act. Such successor Depositary may authenticate the Receipts in the name of the predecessor Depositary or in the name of the successor Depositary.

SECTION 5.05. Corporate Notices and Reports. The Company agrees that it will deliver to the Depositary and the Depositary will, promptly after receipt thereof, transmit to the record holders of Receipts, in each case at the address furnished to it pursuant to Section 4.08, all notices and reports (including without limitation financial statements) required by law, the rules of any national securities exchange upon which the shares of Stock, the Depositary Shares or the Receipts are listed or by the Company's Articles of Incorporation, as amended (including the Series N Amendment), to be furnished by the Company to holders of shares of the applicable Stock. Such transmission will be at the Company's expense and the Company will provide the

Depositary with such number of copies of such documents as the Depositary may reasonably request.

SECTION 5.06. <u>Indemnification by the Company</u>. The Company shall indemnify the Depositary, any Depositary's Agent and any Registrar against, and hold each of them harmless from, any loss, liability, damage, cost or expense (including the costs and expenses of defending itself) which may arise out of (i) acts performed or omitted in connection with this Deposit Agreement and the Receipts (a) by the Depositary, any Registrar or any of their respective agents (including any Depositary's Agent), except for any liability arising out of gross negligence or willful misconduct (which gross negligence or willful misconduct must be determined by a final, non-appealable order, judgment, decree or ruling of a court of competent jurisdiction) on the respective parts of any such person or persons, or (b) by the Company or any of its agents, or (ii) the offer, sale or registration of the Receipts or shares of Stock pursuant to the provisions hereof. The obligations of the Company set forth in this <u>Section 5.06</u> shall survive any succession of any Depositary, Registrar or Depositary's Agent.

SECTION 5.07. Charges and Expenses. The Company shall pay all charges of the Depositary in connection with the initial deposit of shares of Stock and the initial issuance of the Depositary Shares, and any redemption of shares of Stock. All other transfer and other taxes and governmental charges shall be at the expense of holders of Receipts. The Depositary may refuse to effect any transfer of a Receipt or any withdrawal of shares of Stock evidenced thereby until all such taxes and charges with respect to such Receipt or shares of Stock are paid by the holder thereof. If, at the request of a holder of Receipts, the Depositary incurs charges or expenses for which it is not otherwise liable hereunder, such holder will be liable for such charges and expenses, provided, however, the Depositary need not incur such charges and expenses if repayment of such amounts is not reasonably assured to it.

All other charges and expenses of the Depositary and any Depositary's Agent hereunder and of any Registrar (including, in each case, fees and expenses of counsel) incurred in the preparation, delivery, amendment, administration and execution of this Deposit Agreement and incident to the performance of their respective obligations hereunder will be paid upon consultation and agreement between the Depositary and the Company as to the amount and nature of such charges and expenses. The Depositary shall present any statement for charges and expenses to the Company promptly, unless the Company shall agree otherwise.

ARTICLE VI

AMENDMENT AND TERMINATION

SECTION 6.01. <u>Amendment</u>. The form of the Receipts and any provisions of this Deposit Agreement may at any time and from time to time be amended by agreement between the Company and the Depositary in any respect which they may deem necessary or desirable; <u>provided</u>, <u>however</u>, that no such amendment which shall materially and adversely alter the rights of the holders of Receipts shall be effective unless such amendment shall have been approved by the record holders of Receipts representing at least a majority of the Depositary Shares then outstanding. Every holder of an outstanding Receipt at the time any such amendment becomes

effective shall be deemed, by continuing to hold such Receipt, to consent and agree to such amendment and to be bound by the Deposit Agreement as amended thereby.

SECTION 6.02. <u>Termination</u>. This Deposit Agreement may be terminated by the Company or the Depositary only if (i) all outstanding Depositary Shares shall have been redeemed pursuant to <u>Section 2.03</u>, or (ii) there shall have been made a final distribution in respect of the Stock in connection with any liquidation, dissolution or winding up of the Company and such distribution shall have been distributed to the record holders of Receipts pursuant to <u>Section 4.01</u> or <u>4.02</u>, as applicable.

Whenever the Deposit Agreement is eligible to be terminated pursuant to (ii) above, the Depositary will mail notice of such termination to the record holders of all Receipts then outstanding at least 30 days prior to the date fixed in that notice for termination of the Deposit Agreement. If any Depositary Shares remain outstanding after the date of termination, the Depositary thereafter will discontinue the transfer of such Depositary Shares, will suspend the distribution of dividends to the owners thereof, and will not give any further notices (other than notice of such termination) or perform any further acts under this Deposit Agreement, except that the Depositary will continue (i) to collect dividends on the outstanding shares of the applicable Stock and any other distributions with respect thereto and (ii) to deliver or cause to be delivered shares of such Stock, together with such dividends and distributions, or principal and interest, and the net proceeds of any sales of rights, preferences, privileges or other property (other than real property) in exchange for the Depositary Shares surrendered. At any time after the expiration of three years from the date of termination, the Depositary may (but shall not be obligated to do so) sell the shares of Stock then held by it at a public or private sale, at such place or places and upon such terms as it deems proper and may thereafter hold the net proceeds of such sale, without liability for interest, for the pro rata benefit of the owners of the related Depositary Shares, which have not theretofore been surrendered. Subject to applicable escheat laws, any monies set aside by the Company in respect of any payment with respect to the shares of the Series N Fixed-to-Floating Rate WMI Preferred Stock represented by the Series N Depositary Shares, or dividends thereon, and unclaimed at the end of three years from the date upon which such payment is due and payable shall revert to the general funds of the Company, after which reversion the holders of Receipts evidencing such Depositary Shares shall look only to the general funds of the Company for payment thereof.

Upon the termination of this Deposit Agreement, the Company shall be discharged from all obligations under this Deposit Agreement except for its obligations to the Depositary and the Depositary's Agent and any Registrar under Sections 5.03, 5.06 and 5.07.

ARTICLE VII

MISCELLANEOUS

SECTION 7.01. <u>Counterparts</u>. This Deposit Agreement may be executed in any number of counterparts, and by each of the parties hereto on separate counterparts, each of which

counterparts, when so executed and delivered, shall be deemed an original, but all such counterparts taken together shall constitute one and the same instrument.

SECTION 7.02. Exclusive Benefit of Parties. This Deposit Agreement is for the exclusive benefit of the parties hereto, and their respective successors hereunder, and shall not be deemed to give any legal or equitable right, remedy or claim to any other person whatsoever.

SECTION 7.03. <u>Invalidity of Provisions</u>. In case any one or more of the provisions contained in this Deposit Agreement or in the Receipts should be or become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein or therein shall in no way be affected, prejudiced or modified thereby.

SECTION 7.04. Notices. Any and all notices to be given to the Company hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or telegram, telecopy or telex confirmed by letter, addressed to the Company at Washington Mutual, Inc., Attention: Corporate Secretary, 1301 Second Avenue, WMC 3501, Seattle, Washington 98101, telephone: 1-206-500-4347, telecopy: 1-206-377-2236, or at any other address and to the attention of any other person of which the Company shall have notified the Depositary in writing.

Any and all notices to be given to the Depositary hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to the Depositary at the Depositary's Office, at Mellon Investor Services LLC, Attention: Corporate Trust Administration, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-302-651-1000, telecopy 1-302-636-4140, with a copy to Mellon Investor Services LLC, Attention: Legal Department, 480 Washington Blvd., Jersey City, NJ 07310, telephone: 1-201-680-2198, telecopy: 1-201-680-4610, or at any other address and any other person of which the Depositary shall have notified the Company in writing.

Any and all notices to be given to any record holder of a Receipt hereunder or under the Receipts shall be in writing and shall be deemed to have been duly given if personally delivered or sent by mail or by telegram, telecopy or telex confirmed by letter, addressed to such record holder at the address of such record holder as it appears on the books of the Depositary, or if such holder shall have filed with the Depositary a written request that notices intended for such holder be mailed to some other address, at the address designated in such request.

Delivery of a notice sent by mail or by telegram, telecopy or telex shall be deemed to be effected at the time when a duly addressed letter containing the same (or a confirmation thereof in the case of a telegram or telex message) is deposited, postage prepaid, in a post office letter box. The Depositary or the Company may, however, act upon any telegram or telecopy message received by it from the other or from any holder of a Receipt, notwithstanding that such telegram or telecopy message shall not subsequently be confirmed by letter or as aforesaid.

SECTION 7.05. <u>Depositary's Agents</u>. The Depositary may from time to time appoint any Depositary's Agent to act in any respect for the Depositary for the purposes of this Deposit Agreement and may at any time appoint additional Depositary's Agents and vary or terminate

the appointment of such Depositary's Agents. The Depositary will promptly notify the Company of any such action.

SECTION 7.06. <u>Holders of Receipts are Parties</u>. By acceptance of delivery of the Receipts, any holder from time to time of such Receipt shall be deemed to have agreed to become a party to this Deposit Agreement and to be bound by all of the terms and conditions hereof and of the Receipts to the same extent as though such person executed this Deposit Agreement.

SECTION 7.07. Governing Law. THIS DEPOSIT AGREEMENT AND THE RECEIPTS AND ALL RIGHTS HEREUNDER AND THEREUNDER AND PROVISIONS HEREOF AND THEREOF SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK (WITHOUT REFERENCE TO APPLICABLE CONFLICTS OF LAW PROVISIONS).

SECTION 7.08. <u>Inspection of Deposit Agreement</u>. Copies of this Deposit Agreement shall be filed with the Depositary and the Depositary's Agents and shall be open to inspection during business hours at the Depositary's Office and the respective offices of the Depositary's Agents, if any, by any holder of a Receipt.

SECTION 7.09. <u>Headings</u>. The headings of articles and sections in this Deposit Agreement and in the form of the Receipt set forth in <u>Exhibit A</u> hereto have been inserted for convenience only and are not to be regarded as a part of this Deposit Agreement or the Receipts or to have any bearing upon the meaning or interpretation of any provision contained herein or in the Receipts.

IN WITNESS WHEREOF, the Company and the Depositary have duly executed this Deposit Agreement as of the day and year first above set forth, and all holders of Receipts shall become parties hereto by and upon acceptance by them of delivery of Receipts issued in accordance with the terms hereof.

WASHINGTON MUTUAL, INC

By:

Title: Peter/Freilinger Senior Vice President

MELLON INVESTOR SERVICES LLC,

as Depositary

By:

Dennis Treibel -Relationship Manager

MELLON INVESTOR SERVICES LLC,

as Registrar

By:

Dennis Treibel - Relationship Manager

FORM OF RECEIPT

TEMPORARY RECEIPT EXCHANGEABLE FOR ENGRAVED RECEIPT WHEN READY FOR DELIVERY	CERTIFICATE FOR
	SERIES N DEPOSITARY SHARES
TRANSFERABLE DEPOSITARY RECEIPT	CUSIP
DE CONTROL RECENT	SEE REVERSE FOR CERTAIN DEFINITIONS

DEPOSITARY RECEIPT FOR SERIES N DEPOSITARY SHARES, EACH SERIES N DEPOSITARY SHARE REPRESENTING A ONE-THOUSANDTH (1/1000TH) INTEREST IN ONE SHARE OF SERIES N PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK

WASHINGTON MUTUAL, INC. A Washington corporation

MELLON INVESTORS SERVICES LLC, as Depositary (the "Depositary"), hereby

certifies that
is the registered owner of SERIES N DEPOSITARY SHARES ("Series N Depositary Shares"),
each Series N Depositary Share representing a one-thousandth (1/1000 th) interest in one share of
Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock, no par value and
liquidation preference \$1,000,000.00, of Washington Mutual, Inc., a Washington corporation
(the "Corporation"), on deposit with the Depositary, subject to the terms and entitled to the
benefits of the Deposit Agreement dated as of October 25, 2007 (the "Deposit Agreement"),
among the Corporation, the Depositary, the Registrar and the holders from time to time of
Depositary Receipts evidencing the Series N Depositary Shares Fixed-to-Floating Rate.
Capitalized terms not otherwise defined herein shall have the meanings provided in the Deposit
Agreement. By accepting this depositary Receipt, the holder hereof becomes a party to and
agrees to be bound by all the terms and conditions of the Deposit Agreement. This Depositary
Receipt shall not be valid or obligatory for any purpose or be entitled to any benefits under the
Deposit Agreement unless it shall have been executed by the Depositary by the manual signature
of a duly authorized officer or, if executed in facsimile by the Depositary, countersigned by a
Registrar in respect of the depositary Receipts by a duly authorized officer thereof.

17462655 A-1

Dated:

MELLON INVESTOR SERVICES LLC

Depositary and Registrar

By:		
Authorized	l Officer	

WASHINGTON MUTUAL, INC.

WASHINGTON MUTUAL, INC. WILL FURNISH WITHOUT CHARGE TO EACH HOLDER OF A RECEIPT WHO SO REQUESTS A COPY OR SUMMARY OF THE DEPOSIT AGREEMENT AND A COPY OR SUMMARY OF THE PORTIONS OF THE ARTICLES OF INCORPORATION ESTABLISHING THE DESIGNATIONS, RELATIVE RIGHTS, PREFERENCES AND LIMITATIONS APPLICABLE TO SHARES OF EACH CLASS AND THE VARIATIONS IN RIGHTS, PREFERENCES AND LIMITATIONS DETERMINED FOR EACH SERIES (AND THE AUTHORITY OF THE BOARD OF DIRECTORS TO DETERMINE VARIATIONS FOR FUTURE SERIES) WHICH THE CORPORATION IS AUTHORIZED TO ISSUE, INCLUDING THE SERIES N PERPETUAL NON-CUMULATIVE FIXED-TO-FLOATING RATE PREFERRED STOCK. ANY SUCH REQUEST SHOULD BE ADDRESSED TO WASHINGTON MUTUAL, INC., 1301 SECOND AVENUE, WMC 3501, SEATTLE, WASHINGTON 98101, TELEPHONE: 1-206-500-4347, TELECOPY: 1-206-377-2366, ATTENTION: CORPORATE SECRETARY.

ABBREVIATIONS

The following abbreviations, when used in the inscription on the face of this Depositary Receipt, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants	in common		
TEN ENT — as tenants	by the entireties		
JT TEN — as joint ter		rvivorship and not as	s tenants in common
·	•	•	
UNIF GIFT MIN ACT—	Cust	odian	_
UNIF GIFT MIN ACT—	(Cust)	(Minor)	
	under Uniform Gifts	s to Minors Act	
			(State)
TINITE TELEVISION ACT	Const	. J:	
UNIF TRF MIN ACT —	Cust	odian	_
	(Cust)	(Minor)	
	(until age) under	Uniform Transfers to	Minors Act
	(State)	_	
		reviations may also be not in the above list.	e
For value re	eceived,	hereby	sell(s), assign(s) and transfer(s)
unto			

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations, and credit unions with membership in an approved signature guarantee medallion program), pursuant to Rule 17Ad-15 under the Securities Exchange Act of 1934.

17462655 A-4

Exhibit 4

Exhibit filed under seal as required by the Order of the Court dated September 9, 2010 [Bankruptcy Case No. 08-12229 (MFW) Docket No. 5407]

Ex. 5A

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re WASHINGTON MUTUAL, INC. et al., Debtors) CHAPTER 11) CASE NO. 08-12229 (MFW)
Black Horse Capital, L.P., et al. Plaintiffs) JOINTLY ADMINISTERED
v.)
JPMorgan Chase Bank, N.A., et al., Defendants)))
)))
)))
)

EXPERT REPORT OF PROFESSOR CHRISTOPHER M. JAMES

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I. QUALIFICATIONS

- 1. I am the William H. Dial / SunBank Eminent Scholar in Finance and Economics and Professor of Finance at the University of Florida. I am also a visiting scholar and consultant at the Federal Reserve Bank of San Francisco. My research while at the Federal Reserve Bank included analysis of the effects of the financial crisis on the availability of bank credit and on the value of structured products. Prior to joining the faculty of the University of Florida, I taught at the University of Oregon and the University of Michigan. I have also held positions at the Federal Reserve Bank of San Francisco, the Federal Deposit Insurance Corporation ("FDIC"), and the Treasury Department. I currently serve as the SEC-approved independent distribution consultant for the Janus Mutual Fund complex.
- 2. My academic research has been in the areas of financial institutions, bank lending, corporate finance, financial institutions regulatory policy, and private equity investments. I have published numerous articles on issues related to corporate finance, bank lending, private equity, and how information is incorporated into securities prices.
- 3. I served on the Board of Directors and the Advisory Board to SunTrust Bank of Florida between 1989 and 2005. As part of my Board duties I served on the executive committee of the Bank. The executive committee approved all major investment activity (e.g., credit extensions, mortgages, and loan restructurings). From 1995 to 2002, I also served on the academic board of the Turnaround Management Association.
- 4. I serve on the editorial boards of four scholarly journals, including the Journal of Financial Economics. I served as an associate editor of the Journal of Finance from 1988 through 2000, and as editor of the Journal of Financial Intermediation from 1988 through

1999. I have provided consulting services to a number of government agencies and corporate entities on issues concerning the valuation of corporate assets and corporate restructuring. I have also provided expert witness testimony on issues concerning loss causation, mutual fund pricing, the estimation of damages, and corporate restructurings. A copy of my curriculum vitae is attached as Exhibit 1. A list of my deposition and trial testimony over the past four years is included in Exhibit 2.

II. ASSIGNMENT

- 5. I have been retained as an expert witness by JPMorgan Chase Bank, N.A. to analyze certain issues regarding the Washington Mutual REIT Trust Preferred Securities issued in 2006 and 2007.¹
- 6. In the course of my analysis, I have reviewed numerous documents including the offering documents for the REIT Trust Preferred Securities, public press, analyst reports, SEC filings, legal pleadings, and other documents produced in this matter. A complete list of the documents that I have relied upon in forming my opinions is attached as Exhibit 3.
- 7. I am being compensated for my time and services on an hourly basis, and am charging my regular hourly rate of \$785. I have been assisted in this matter by the staff of Cornerstone Research, who worked under my direction. Payment for my work on this matter is in no way contingent on the opinions I express or the outcome of this matter.
- 8. My work in this matter is ongoing, and I understand that discovery in this matter has not yet closed. In particular, discovery concerning the Plaintiffs' purchases as well as depositions of the Plaintiffs are still under way. The opinions presented in this report are

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¹ I refer to the securities issued by Washington Mutual at issue in this proceeding as trust preferred securities and TruPS to be consistent with the terminology I understand the parties have used to refer to them in this action.

a result of the information available to me as of the report date, and I retain the right to supplement or modify my opinions if new information comes to light. I also retain the right to respond to any additional report(s) or opinions offered by expert(s) for the Plaintiffs.

III. SUMMARY OF OPINIONS

- 9. The Washington Mutual Trust Preferred Securities ("TruPS") were issued to raise core regulatory capital for Washington Mutual Bank ("WMB" or "the Bank"). An essential feature of the TruPS and the reason they were treated as core capital of WMB was that they would be unconditionally available to WMB to use as capital in times of financial stress. To accomplish this, the TruPS were automatically exchangeable into depositary shares representing preferred stock of Washington Mutual, Inc. ("WMI") in the event the Office of Thrift Supervision ("OTS") were to declare an Exchange Event and, following the exchange, any necessary transfers would be undertaken to make this capital unreservedly available to WMB.² As was disclosed by WMI, the OTS had discretion to declare an Exchange Event under circumstances of financial stress to WMB including WMB being or at risk of becoming undercapitalized or being limited by the regulator in its ability to pay dividends.
- 10. The TruPS were sold only to sophisticated institutional investors who met statutory requirements. The TruPS were sold in private placements and by law were not available to the general public. These sophisticated investors were informed that the TruPS were being offered to raise core capital for WMB.

² WMB was a subsidiary of WMI, which is a thrift holding company. The OTS was the primary regulator of WMB.

- 11. By definition, securities used to raise core capital for regulatory purposes must be and are first in line to absorb losses when a bank fails or becomes undercapitalized, illiquid or otherwise unable to meet its obligations. As a result, the fact that the OTS had agreed to treat the TruPS as core capital of WMB, and the fact that the TruPS would be automatically exchanged into depository shares representing preferred stock of WMI in the event the OTS were to declare an Exchange Event was extensively disclosed in the TruPS offering documents and in WMI's SEC filings. Moreover, these disclosures described the potential risk to investors if an exchange were to take place. The fact that WMB's regulators as well as the credit rating agencies viewed the TruPS as regulatory capital was discussed in analyst reports and understood by the market.
- 12. Banking companies such as Washington Mutual issued trust preferred securities because it enabled them to finance their operations at a lower cost than otherwise might be possible. On the one hand, regulators generally would not accept debt financing as core capital; on the other, issuing TruPS was less expensive than issuing common equity, and so it enabled WMB to raise core capital to meet and maintain regulatory capital levels less expensively than otherwise would have been feasible. From a regulatory standpoint, the Washington Mutual TruPS were not unique, but were similar to asset-backed trust preferred securities of other issuers, including, for example, Wachovia.
- 13. The defining feature that enables banking regulators to accept instruments such as TruPS as core capital is that they are to be automatically exchanged (here, at the holding company level) and then become the property of the insured banking institution (WMB) in the event the regulator declares it necessary. To be counted as core capital, the TruPS had to be immediately available to meet the capital needs of WMB upon declaration of an

- Exchange Event by the OTS. If upon an Exchange Event the TruPS were not immediately available to meet the capital needs of WMB, then the TruPS would not serve the loss absorption role of core capital.
- 14. I understand that the Plaintiffs in this case allege that the written commitment WMI made to the OTS to immediately down-stream the TruPS to WMB upon a Conditional Exchange following the OTS's declaration of an Exchange Event was not disclosed and that, therefore, the Conditional Exchange of their shares into WMI preferred equity should be ignored. However, the fact that upon a Conditional Exchange Plaintiffs would be deemed to be holders of WMI preferred equity—with no recourse to WMB's capital should WMB fail—was fully and repeatedly disclosed. The precise mechanics of WMI's obligation to down-stream the TruPS were not explicitly disclosed, but the fact that such a down-streaming would happen was implicit in the repeated disclosures that the OTS had agreed to treat the TruPS as core capital of WMB. Treatment as core capital required that the instruments be immediately available to WMB upon an Exchange Event. The written letters between WMI and the OTS simply confirm and memorialize the mechanics of how and when the down-streaming would happen. The TruPS would not have qualified as core regulatory capital without an assurance by WMI to the regulators that they would be down-streamed and available to WMB when needed.
- 15. Given that WMI disclosed that the TruPS were to be treated as core capital of WMB, a sophisticated investor should have known that the securities would be down-streamed through some mechanism to WMB upon an Exchange Event. Furthermore, based on my review of analyst commentary, it is clear that the market understood that the TruPS

- would be down-streamed from WMI in order to support WMB upon the occurrence of the Conditional Exchange.
- 16. However, the conclusions in the prior paragraph are largely inapplicable to the Plaintiffs in this case. The Plaintiffs here are not the original investors in the TruPS. Instead, the majority are purchasers of WMI Preferred Equity at a time when they should have known the Conditional Exchange and the down-streaming had already taken place. Having purchased their securities for pennies on the dollar after the Conditional Exchange and down-stream had occurred, the Plaintiffs seek the Court to reverse events. Plaintiffs stand to profit disproportionately to the prices they paid for WMI preferred equity if the Conditional Exchange and the down-streaming were not given effect.

IV. BACKGROUND

IV-A. Washington Mutual

17. Founded in 1889, Washington Mutual was the largest savings and loans institution in the United States at the time of its failure in September 2008.⁴ During the relevant events, WMI was the parent holding company of WMB. As such, its recourse to WMB's capital was limited. On a day-to-day basis, regulators prohibited WMI from improving its position to the detriment of WMB. And, if regulators closed the bank subsidiary and placed it in receivership, WMI, its investors, and its creditors would have no claim whatsoever to the capital and assets of WMB.⁵

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³ Based on my review of Plaintiffs' trading data available to me as of the filing of this report, the first Plaintiff transaction occurring after September 26, 2008 was on June 23, 2009.

⁴ "Government Seizes WaMu and Sells Some Assets," *The New York Times*, September 26, 2008. See also: "Press Release OTS 08-046 - Washington Mutual Acquired by JPMorgan Chase," Office of Thrift Supervision, September 25, 2008; Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, p. 52.

⁵ For example, "the Fixed-to-Floating Rate WMI Preferred Stock (and thus the Fixed-to-Floating Rate Depositary Shares) is structurally subordinated to all existing and future liabilities of WMI's subsidiaries. Holders of Fixed-

- 18. The period of 2007-2008 was a particularly turbulent time for the nation's financial system. There was an unprecedented deterioration in the financial condition of many institutions, which has in many cases led to their failure. Washington Mutual was among the many banks and thrifts affected by the financial crisis.
- 19. According to the Examiner's Report, on September 7, 2008, WMB entered into a Memorandum of Understanding ("MOU") with the OTS, which was an effort by the regulator to address WMB's troubled financial condition. It placed limits on the institution's ability to pay dividends. A few weeks later, on September 25, 2008, the OTS placed WMB into receivership with the Federal Deposit Insurance Corporation ("FDIC"). The OTS explained publicly that "[p]ressure on WaMu intensified in the last three months as market conditions worsened" and that "an outflow of deposits began on September 15, 2008, totaling \$16.7 billion." The OTS stated that "[w]ith insufficient liquidity to meet its obligations, WaMu was in an unsafe and unsound condition to transact business."

IV-B. Explanation of Bank Regulation and Capital

20. WMB was a savings and loans institution, also known as a thrift, which is a financial intermediary specializing in accepting deposits and using funds primarily to make

to-Floating Rate Depositary Shares should look only to the assets of WMI, and not any of its subsidiaries, for payments with respect to the Fixed-to-Floating Rate Depositary Shares." Washington Mutual Preferred Funding Trust I Offering Circular dated February 24, 2006 ("Trust I Offering Circular"), p. 28.

⁶ Although no directive was issued by OTS at the time, the MOU, which placed restrictions on WMB's ability to pay dividends, constituted an Exchange Event for the TruPS. "Final Report of the Examiner, Joshua R. Hochberg," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated November 1, 2010, pp. 48, 161.

⁷ "Press Release OTS 08-046 - Washington Mutual Acquired by JPMorgan Chase," Office of Thrift Supervision, September 25, 2008.

^{8 &}quot;Press Release OTS 08-046 - Washington Mutual Acquired by JPMorgan Chase," Office of Thrift Supervision, September 25, 2008.

⁹ "Press Release OTS 08-046 - Washington Mutual Acquired by JPMorgan Chase," Office of Thrift Supervision, September 25, 2008.

residential mortgage loans.¹⁰ Like commercial and retail banks, thrifts are considered depository institutions¹¹ and funded by a combination of deposits, debt and equity.¹² The thrifts' common equity can be owned by a parent thrift holding company; as discussed, this was the case for WMB.¹³

- 21. Thrifts primarily engage in the business of making residential mortgage loans.¹⁴ At its most basic level, the thrift business model generally involves paying depositors lower rates than those charged to borrowers and using income from the spread to grow and pay dividends to shareholders.¹⁵
- 22. While the differences between thrifts and other financial institutions have recently diminished due to deregulation and the resulting competition, they remain under the purview of different regulatory agencies. OTS, the primary regulator of thrifts, was established by Congress in the late 1980s in the aftermath of the savings and loan crisis. 17
- 23. As the primary federal regulator of thrifts, the OTS is "responsible for conducting full-scope examinations to assess [the institutions'] safety and soundness and compliance

Federal Reserve System National Information Center, "All Institution Types Defined," http://www ffiec.gov/nicpubweb/Content/HELP/Institution%20Type%20Description.htm, accessed November 5, 2010

¹¹ Ryan, S.G. (2007), *Financial Instruments and Institutions: Accounting and Disclosure Rules*, 2nd Ed., Hoboken, NJ: John Wiley and Sons, p. 19.

¹² Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, pp. 35, 60.

¹³ Ryan, S.G. (2007), *Financial Instruments and Institutions: Accounting and Disclosure Rules*, 2nd Ed., Hoboken, NJ: John Wiley and Sons, p. 46.

¹⁴ Federal Reserve System National Information Center, "All Institution Types Defined," http://www.ffiec.gov/nicpubweb/Content/HELP/Institution%20Type%20Description.htm, accessed November 5, 2010.

¹⁵ Ryan, S.G. (2007), *Financial Instruments and Institutions: Accounting and Disclosure Rules*, 2nd Ed., Hoboken, NJ: John Wiley and Sons, p. 20.

Regulators of financial institutions include the Office of the Comptroller of the Currency ("OCC"), the Federal Reserve, the OTS, the FDIC and various state regulators. Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, pp. 39-40, 51.

¹⁷ Office of Thrift Supervision, "History," http://www.ots.treas.gov/?p=History, accessed November 3, 2010.

with consumer protection laws."¹⁸ The OTS generally "examines each savings association every 12 to 18 months,"¹⁹ although I understand that Washington Mutual, as the largest thrift, was on a continuous exam cycle. OTS examiners "monitor the condition of thrifts through off-site analysis of regularly submitted financial data and regular contact with thrift personnel."²⁰

- 24. Since a healthy and sound banking system is necessary for economic growth and stability, a governmental agency typically provides deposit insurance. Deposit insurance encourages stability and may reduce the possibility of bank runs by assuring depositors that they will be made whole (up to statutory limits) even if a bank fails.²¹ The FDIC has the responsibility of insuring deposits at thrifts.²² The FDIC levies insurance premiums and carries out its own examinations of insured institutions in order to assess risks to the deposit insurance fund.²³
- 25. Financial institutions face a number of different risks, including credit risk, interest rate risk, and liquidity risk.²⁴ Stated most simply, credit risk is the possibility of loss due to borrowers not repaying their loans;²⁵ interest rate, or market, risk is the risk of loss

¹⁸ "Evaluation of Federal Regulatory Oversight of Washington Mutual Bank, Report No. EVAL-10-002" Offices of Inspector General, April 2010, p. 4.

¹⁹ Office of Thrift Supervision, "OTS Profile," http://www.ots.treas.gov/?p=OTSProfile, accessed November 5, 2010.

²⁰ Office of Thrift Supervision, "OTS Profile," http://www.ots.treas.gov/?p=OTSProfile, accessed November 5, 2010

²¹ Diamond, D and D. Philip (2000), "Bank Runs, Deposit Insurance, and Liquidity," Federal Reserve Bank of Minneapolis, Vol. 24, No. 1, pp. 14-23.

²² Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, p. 51.

²³ Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, p. 39.

²⁴ Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, pp. 168-184.

²⁵ Saunders, A. and M. M. Cornett (2008), Financial Institutions Management: A Risk Management Approach, 6th Ed., New York, NY: McGraw-Hill Irwin, pp. 173-175

associated with fluctuation in interest rates and other market conditions;²⁶ liquidity risk is the potential inability to meet short term cash needs.²⁷ Bank capital acts as a cushion against these risks and may enable an institution to continue operating in times of adverse financial circumstances. According to the OTS:

Capital absorbs losses, promotes public confidence, and provides protection to depositors and the FDIC insurance funds. It provides a financial cushion that can allow a thrift to continue operating during periods of losses or other adverse conditions.²⁸

- 26. Deposits are not considered capital, because they are the most senior of the liabilities of a financial institution (*i.e.*, they are the first obligations the financial institution must repay).²⁹ Thus, when a bank is funded mostly by deposits and has only a small amount of capital, a decline in the value of assets can quickly wipe out the bank's equity. This increases the likelihood that deposits, and hence the FDIC's insurance fund, will be at risk of suffering a loss. By contrast, a bank that has a higher level of capital relative to its deposits is safer from the perspective of both regulators and depositors. When more capital is available, there is a greater cushion present to bear losses before deposits are affected. All else being equal, bank and thrift regulators prefer financial institutions to have higher levels of capital.
- 27. One of the key metrics of thrift's health is its level of core capital. In the context of non-thrift financial institutions, core capital is alternatively referred to as "Tier I capital." The

²⁶ Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, pp. 169-171.

²⁷ Ryan, S.G. (2007), *Financial Instruments and Institutions: Accounting and Disclosure Rules*, 2nd Ed., Hoboken, NJ: John Wiley and Sons, p. 58.

²⁸ "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003.

²⁹ Federal Deposit Insurance Corporation, "Resolutions Handbook: Chapter 7 – The FDIC's Role as Receiver," www fdic.gov/bank/historical/reshandbook/ch7recvr.pdf, accessed November 5, 2010, p. 72.

level of capital is measured relative to the bank's level of assets. Core capital at thrifts includes the following components:³⁰

- (i) Common stockholders' equity;
- (ii) Qualifying non-cumulative perpetual preferred stock;
- (iii) Minority interest in equity accounts of consolidated subsidiaries.
- 28. Core capital provides stable capital for the bank. Capital cannot require repayment on demand nor obligate the bank to make regular dividend or principal payments. As a result, debt and debt-like securities are not considered core capital. Even though debtholders typically cannot force early repayment of principal, most debt requires regular interest payments. If contractually required payments coincide with a period of low liquidity, a bank may be unable to meet the obligation and be forced into default. By contrast, core capital is considered "patient" in the sense that it never requires immediate payments. It is always the first loss position and there is no ambiguity as to its availability to cover losses.³¹
- 29. Capital standards for large financial institutions are governed by the Basel Accords although different regulatory agencies implement their own regulations to conform to the Basel standards.³² While the implementations may differ, regulators attempt to synchronize capital standards globally and across similarly situated institutions.³³ The

^{30 &}quot;Basics for Bank Directors," Federal Reserve Bank of Kansas City, Division of Supervision and Risk Management, 2010; "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003. Note that core capital excludes items such as goodwill and other intangible assets.

³¹ Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, p. 586.

³² "International Convergence of Capital Measurement and Capital Standards," *Basel Committee on Banking Supervision*, 2006, pp. 1-3.

³³ "International Convergence of Capital Measurement and Capital Standards," *Basel Committee on Banking Supervision*, 2006, p. 3.

OTS in particular enforces standards that require savings and loans institutions to maintain a minimum level of capital.³⁴

30. Thrifts fall into the well capitalized category if their core capital to asset ratio is 5% or greater, ³⁵ core capital risk-based capital ratio is 6% or greater, and total risk-based capital ratio (which measures capital as core/Tier I capital plus Tier II capital³⁶) is 10% or greater. ³⁷ Banks that are well capitalized have access to better financing options and are permitted to engage in certain activities. ³⁸ Institutions that become undercapitalized (or are considered by regulators at risk of becoming undercapitalized) may be required to take corrective actions, which typically include restrictions on the bank's business activities. ³⁹

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³⁴ Institutions must meet two capital adequacy rules. The first rule is that institutions regulated by the OTS must meet tangible, core, and risk-based capital standards required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). The second rule is capital compliance as defined in Prompt Corrective Action ("PCA") policy, which was introduced by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). ("Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003; Saunders, A. and M. M. Cornett (2008), *Financial Institutions Management: A Risk Management Approach*, 6th Ed., New York, NY: McGraw-Hill Irwin, p. 50).

Asset ratio is adjusted as per the definition of the Code of Federal Regulations §567.1. See: Electronic Code of Federal Regulations, "Title 12: Banks and Banking, Part 567—Capital," § 567.1, <a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr;sid=da82a16af47c74fde762a87038d706ae;rgn=div5;view=text;node=12%3A5.0.1.1.42;idno=12;cc=ecfr, accessed November 10, 2010.

³⁶ Tier II capital is a secondary type of bank capital that includes loss reserves and certain kinds of subordinated debt.

³⁷ Electronic Code of Federal Regulations, "Title 12: Banks and Banking, Part 565—Prompt Corrective Action," §565.2 and §565.4, http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=a7bda27e9d56f929bc2f8943c9ff4e16&rgn=div5&view=text&node=12:5.0.1.1.41&idno=12, accessed November 10, 2010.

³⁸ "For example, 'undercapitalized banks' must restrict asset growth, obtain prior approval for business expansion, and have an approved plan to restore capital. 'Critically undercapitalized banks' must be placed in receivership or conservatorship within 90 days unless some other action would result in lower long-term costs to the deposit insurance fund. In addition to mandatory actions, the agencies have discretion to require inadequately capitalized banks to, among other things, limit dividend payments, limit deposit rates paid, replace senior executive officers, and elect new directors." "Basics for Bank Directors," *Federal Reserve Bank of Kansas City, Division of Supervision and Risk Management*, 2010, p. 29.

³⁹ "Basics for Bank Directors," Federal Reserve Bank of Kansas City, Division of Supervision and Risk Management, 2010.

V. THE TRUST PREFERRED SECURITIES

V-A. TruPS as Regulatory Capital

- 31. Although thrifts and banks can raise funds to meet regulatory capital requirements entirely by issuing common equity, this is not always optimal. Interest payments on debt are tax-deductible while dividends paid to stockholders are not.⁴⁰ This results in debt issuance having a lower cost relative to issuing equity. Therefore, if allowed by regulators, financial institutions would typically prefer issuing at least some debt in order to satisfy capital requirements. The desire for low-cost means of meeting regulatory capital requirements has led to the development of hybrid capital.
- 32. Hybrid capital such as TruPS has features of both debt and equity. TruPS are popular with financial institutions because they can be treated as core capital by regulators if certain conditions are met.⁴¹ One essential condition is that the assets be immediately available to the depository institution in the event regulators determine that additional capital is required.⁴² Some TruPS are also tax advantaged under current Internal Revenue Service rules and can provide banks with tax savings typically associated with issuing debt.⁴³ The TruPS issued by Washington Mutual were hybrid capital.
- 33. The use of TruPS as a source of regulatory capital dates back to the 1990s. Traditional TruPS are "nonperpetual cumulative preferred stock issued by a wholly owned trust subsidiary of a corporation (typically insurance companies and bank or savings and loan

⁴⁰ "Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital, Notice 05-13," *Federal Reserve Bank of Dallas*, 2005, p. 11828.

⁴¹ Azarow, R. and K. Thomas, "Trust Preferred Securitization: Market Innovations for Midsize Financial Institutions," *Bank Accounting & Finance*, 2002, p. 30.

⁴² "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003, p. 120 B. 4.

⁴³ Interest payments made to the trust that issues TruPS are tax deductible from the sponsoring financial institution's perspective when the trust holds the institution's debt as its asset.

holding companies)."⁴⁴ The trust's assets are comprised of subordinated debt issued by the financial institution's holding company. To qualify for inclusion as core capital, dividend payments on the TruPS must be allowed to be postponed for a period of up to five years at the discretion of the sponsoring organization.⁴⁵

34. There have been issuances of another type of TruPS, backed by assets rather than the sponsoring institution's debt, and in particular by real estate assets.⁴⁶ These securities are commonly referred to as Real Estate Investment Trust ("REIT") preferred securities. The OTS described this type of TruPS as follows:

REIT (real estate investment trust) preferred stock is a hybrid instrument that combines traits of both debt and equity and offers special tax treatment. REIT preferred stock pays dividends like an equity investment, but is backed by collateral similar to certain debt instruments. Under certain conditions, REIT preferred stock may receive favorable capital treatment.

In a typical REIT preferred stock transaction, a thrift or holding company establishes a separate legal entity that owns 100 percent of the entity's common stock. In most cases, the value of the common stock is nominal. After establishing the new separate legal entity, the thrift sells real-estate related assets, usually mortgages or mortgage-back securities, to this separate entity. The new entity pays for the real estate-related assets with cash proceeds from a simultaneous preferred stock issuance to independent third parties. ⁴⁷

35. Because REIT preferred securities typically hold real estate assets originating from the balance sheet of the holding company's banking subsidiary, regulators need to ensure that these assets are available to the bank when capital is needed and are not encumbered by

⁴⁴ "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003, p. 120 B. 4.

⁴⁵ Azarow, R. and K. Thomas, "Trust Preferred Securitization: Market Innovations for Midsize Financial Institutions," *Bank Accounting & Finance*, 2002, p. 30.

⁴⁶ "Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital, Notice 05-13," *Federal Reserve Bank of Dallas*, 2005, p. 11828.

⁴⁷ "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003, p. 120 B. 4.

continuing obligations to the REIT preferred holders. Thus, as an essential condition allowing REIT preferred securities to count towards core capital requirements, regulators demand that these securities be "exchanged either automatically or upon the directive of the parent bank's primary Federal supervisor for directly issued non-cumulative perpetual preferred securities of the parent bank." In the case of securities that exchange for preferred equity of a thrift holding company, the assets also must be down-streamed to the bank. Otherwise, if the exchanged securities were to remain at the holding company, the banking subsidiary could not use the assets when needed, and the REIT preferred securities could not count as core capital of the bank. In order for REIT preferred securities to serve the role of capital, they must be available to the bank.

- 36. The automatic exchange provision and the availability of the securities to the bank as capital are the lynchpins of core capital treatment. The Federal Reserve recognized in 2005 that "[i]n the absence of the exchange provision, the REIT preferred securities would provide little support to a deteriorating or failing parent bank *or to the FDIC*, despite possibly comprising a substantial amount of the parent bank's tier 1 capital (in the form of minority interest)." This public statement about availability to the FDIC makes it clear that, even in a receivership context, these securities will be with and remain with the bank, not the holding company from which a bank will be seized.
- 37. From a regulatory standpoint, allowing a financial institution to transfer assets from its balance sheet into a special purpose vehicle ("SPV") while retaining only an equity interest in these assets would constitute a serious regulatory mistake, because such a

⁴⁸ "Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital, Notice 05-13," *Federal Reserve Bank of Dallas*, 2005, p. 11828.

⁴⁹ "Risk-Based Capital Standards: Trust Preferred Securities and the Definition of Capital, Notice 05-13," *Federal Reserve Bank of Dallas*, 2005, p. 11828.

structure would fail to fulfill its fundamental purpose as capital. Permitting such a transfer would weaken rather than strengthen the capital position of the bank, thereby diluting the interests of depositors and the FDIC insurance fund.

38. The OTS has made explicit the necessity to ensure that any assets transferred into an SPV issuing REIT preferred securities will be brought back into the banking entity when needed. Specifically, an OTS Regulatory Bulletin states, "[i]f the thrift faces operating difficulties, *all* assets of the consolidated entity should be available for the thrift's use." Covenants to this effect must be in place in order for a thrift to include trust securities as core capital. Having such covenants ensures that upon the OTS's determination that the thrift needs access to capital, the assets will immediately and without question be brought back to the thrift's balance sheet. In this event, the thrift can use these funds to provide liquidity or mitigate losses borne by the deposit insurance fund.

V-B. Washington Mutual Preferred Securities

- 39. Through subsidiaries of WMB and various trusts, Washington Mutual raised \$4 billion in core capital for WMB through the issuance of five series of trust preferred securities in 2006 and 2007:
 - 1) Washington Mutual Preferred Funding (Cayman) I Ltd. 7.25% Perpetual Non-Cumulative Preferred Securities Automatically Exchangeable in Specified Circumstances into Depositary Shares representing Preferred Stock of Washington Mutual, Inc., Series A-1 and Series A-2, as described in an offering circular dated February 24, 2006.⁵²

⁵⁰ "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003, p. 120 B. 4.

⁵¹ "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003, p. 120 B. 4.

⁵² Washington Mutual Preferred Funding (Cayman) I Ltd. Offering Circular dated February 24, 2006 ("Cayman Offering Circular").

- 2) Washington Mutual Preferred Funding Trust I Fixed-to-Floating Rate Perpetual Non-Cumulative Trust Securities Automatically Exchangeable in Specified Circumstances into Depositary Shares representing Preferred Stock of Washington Mutual, Inc., as described in an offering circular dated February 24, 2006.⁵³
- 3) Washington Mutual Preferred Funding Trust II Fixed-to-Floating Rate Perpetual Non-Cumulative Trust Securities Automatically Exchangeable in Specified Circumstances into Depositary Shares representing Preferred Stock of Washington Mutual, Inc., as described in an offering circular dated December 6, 2006.⁵⁴
- 4) Washington Mutual Preferred Funding Trust III Fixed-to-Floating Rate Perpetual Non-Cumulative Trust Securities Automatically Exchangeable in Specified Circumstances into Depositary Shares representing Preferred Stock of Washington Mutual, Inc., as described in an offering circular dated May 21, 2007. 55
- 5) Washington Mutual Preferred Funding Trust IV Fixed-to-Floating Rate Perpetual Non-Cumulative Trust Securities Automatically Exchangeable in Specified Circumstances into Depositary Shares representing Preferred Stock of Washington Mutual, Inc., as described in an offering circular dated October 18, 2007. 56

The structure through which these TruPS were issued can be described as follows. First, WMB (operating through two subsidiaries known as University Street and Washington Mutual Preferred Funding ("WMPF")) placed over \$13 billion of mortgage assets into

⁵³ Trust I Offering Circular.

⁵⁴ Washington Mutual Preferred Funding Trust II Offering Circular dated December 6, 2006 ("Trust II Offering" Circular").

⁵⁵ Washington Mutual Preferred Funding Trust III Offering Circular dated May 21, 2007 ("Trust III Offering

⁵⁶ Washington Mutual Preferred Funding Trust IV Offering Circular dated October 18, 2007 ("Trust IV Offering Circular").

asset trusts owned by Washington Mutual Preferred Funding (the "Asset Trusts"). Second, WMPF issued securities to other trusts created to issue the TruPS to investors (the "Issuing Trusts"). Those securities gave the Issuing Trusts a right to certain dividends, which were then to be passed through to holders of TruPS. Third, the proceeds received by the Issuing Trusts were paid to WMB.⁵⁷ A chart from the Trust I TruPS offering circular visually depicting this structure is attached as Exhibit 4.

- 40. Dividends to holders of the TruPS were contingent on the declaration and payment of dividends on the securities issued by WMPF to the Issuing Trusts. Those dividends were non-cumulative, and declaration of a dividend was not mandatory even if funds for a dividend were available. Thus, if no dividend were declared for a quarter or longer, no dividend would be paid to holders of the TruPS. Because the TruPS were non-cumulative, holders of these securities would not have a right to receive the missed dividend at a later time. Although the TruPS were designed in a way such that cash flow from the mortgage assets in the Asset Trust would be used to pay dividends, the TruPS holders had no direct equity interest in the assets of the Asset Trusts.
- 41. In order to satisfy core capital requirements, the TruPS had two essential features. One was that the TruPS were perpetual and non-redeemable at the option of the holders, which means that the bank could not be required to redeem the TruPS and that it was possible that redemption would never occur. These characteristics distinguished the TruPS from debt securities and meant that purchasers of TruPS had no assurance of ever recouping their investment in the absence of a secondary market for the TruPS. The

⁵⁷ "Final Report of the Examiner, Joshua R. Hochberg," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated November 1, 2010, pp. 153-154.

second essential feature was that the TruPS included a Conditional Exchange feature, which provided that the TruPS would automatically exchange for preferred equity in WMI, WMB's holding company, upon the occurrence of certain regulatory events, to allow the TruPS to be moved into the capital position for which they were intended. Following an exchange, in which the TruPS holders would become holders of preferred equity in WMI, the former TruPS holders would have no further interest in the TruPS and no recourse to access the underlying assets in the Asset Trusts.

42. This Conditional Exchange feature to facilitate the use of the securities as capital of the bank was required for the TruPS to be counted towards core capital by the OTS. The Conditional Exchange was prominently described in each offering circular. The title of each of the five securities' cover pages states that the TruPS were "automatically exchangeable in specified circumstances into depository shares representing preferred stock of Washington Mutual, Inc." The offering circulars further explain:

If the Office of Thrift Supervision . . . so directs following the occurrence of an Exchange Event as described herein, each Trust Security will be automatically exchanged for depository shares representing a like amount of Washington Mutual, Inc.'s ("WMI") Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock. ⁵⁹

The offering circulars also explain the mechanics of the automatic exchange and the circumstances under which the OTS might declare an Exchange Event. WMI's Form 8-K filings contain similar descriptions:

⁵⁸ "Thrift Activities Regulatory Handbook Update: RB 32-31," Office of Thrift Supervision, 2003.

⁵⁹ Trust I Offering Circular, cover page. See also: Cayman Offering Circular, Trust II Offering Circular, Trust III Offering Circular, and Trust IV Offering Circular.

⁶⁰ Cayman Offering Circular; Trust I Offering Circular; Trust II Offering Circular; Trust III Offering Circular; Trust IV Offering Circular.

If the OTS so directs following the occurrence of an Exchange Event...each WaMu Cayman Preferred Security and each Trust Security will be automatically exchanged for a like amount of depositary shares representing a $1/1000^{th}$ of a share of specified classes of preferred stock...of WMI. "Exchange Event" means (a) WMB becoming "undercapitalized" under the OTS' "prompt corrective action" regulations, (b) WMB being placed into conservatorship or receivership or (c) the OTS, in its sole discretion, directing such exchange in anticipation of WMB becoming "undercapitalized" in the near term or taking supervisory action that limits the payment of dividends, as applicable, by WMB, and in connection therewith, directs such exchange. 61

43. WMI provided letters to the OTS in which it confirmed its commitment to immediately down-stream the TruPS received in a Conditional Exchange to WMB. The letters also explained exactly how the down-streaming to WMB would be effected upon the OTS's declaration of an Exchange Event. The offering circulars did not explain the mechanics of down-streaming, but they fully disclosed the treatment of the TruPS as core capital of WMB. The existence of a commitment on the part of WMI to place the TruPS at WMB, where they could serve as capital, is implicit in the disclosure that the OTS had agreed to treat the TruPS as core capital. Given the nature and purpose of core capital, it would have reasonably been understood that WMI would make all related assets of consolidated entities available for WMB's use upon an Exchange Event. These assets would include both the TruPS and common equity of the Trusts.

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⁶¹ WMI Form 8-K filed March 7, 2006. See also: WMI Form 8-Ks filed: December 18, 2006; May 30, 2007; October 30, 2007.

⁶² "Final Report of the Examiner, Joshua R. Hochberg," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated November 1, 2010, p. 157.

^{63 &}quot;The asset-backed nature of REIT preferred stock raises supervisory concerns, especially when the thrift issues the stock through a subsidiary of the thrift. If the thrift faces operating difficulties, all assets of the consolidated entity should be available for the thrift's use. Therefore, OTS requires thrift subsidiaries to include certain restrictive covenants in REIT preferred stock offerings. OTS requires that the stock be permanent (or perpetual) and non-cumulative as to dividends. Additionally, OTS requires that the terms of the REIT preferred stock allow OTS to do both of the following: (i) Restrict the payment of dividends on the REIT preferred stock; (ii) Require the conversion of the REIT preferred stock to common stock. These restrictive covenants must be present for a

- 44. Absent an immediate down-streaming obligation or other agreed-upon mechanism, the OTS would have no assurance that the assets would have been available to WMB. Thus there would be no basis for treating the TruPS as core capital upon their issuance, and the TruPS would not have been described as core capital to the market or accounted for as core capital of the bank.⁶⁵ If not immediately down-streamed upon a Conditional Exchange, the TruPS (and the mortgages underlying the Trusts) would not have been available to support WMB and thus would not provide a critical element of core capital. Since the primary role of core capital is to absorb losses in the event of distress, the TruPS would not fill this critical role unless the automatic exchange feature was present, and securities were down-streamed to the bank. Absent down-streaming, WMB would not have first claim on the assets of the trust and thus not have the support the Asset Trusts were intended to provide.
- 45. On September 25, 2008, the OTS declared an Exchange Event and directed the Conditional Exchange to take place. Prior to the opening of the market on September 26, 2008, WMI issued a press release announcing the Conditional Exchange and that former TruPS holders would automatically be deemed holders of WMI preferred stock:

thrift to include REIT preferred stock as Tier I capital." Thrift Activities Regulatory Handbook Update: RB 32-31, *Office of Thrift Supervision*, 2003, p. 120 B. 4.

⁶⁴ "If the issuing entity is a subsidiary of the thrift, the subsidiary is fully consolidated with the thrift for TFR [Thrift Financial Report] purposes. In the consolidated statements, the thrift reports the REIT preferred stock as minority interest in includable consolidated subsidiaries, a component of Tier I (core) capital." "Thrift Activities Regulatory Handbook Update: RB 32-31," *Office of Thrift Supervision*, 2003, p. 120 B. 4.

⁶⁵ The bank's common equity position in the trust issuing the TruPS is treated as a minority interest for regulatory capital purposes. Minority interests in the equity capital accounts of consolidated subsidiaries can be included in core capital unless "the minority interests fail to provide meaningful capital support to the consolidated bank," which would happen if the minority interests are "entitled to a preferred claim on essentially low risk assets of the subsidiary." Federal Register, Vol. 71, No. 247, dated December 26, 2006, p. 77492.

In connection with the Exchange Event, WMI will effect an exchange (Conditional Exchange) of the Securities into depositary shares representing a like amount of preferred stock in WMI⁶⁶

Subsequently assets were down-streamed to WMB.⁶⁷

46. JPMC and the FDIC intended the TruPS to be included among WMB's assets that were sold to JPM.⁶⁸ Including the TruPS in the transaction helped to avoid losses to the insurance fund.⁶⁹ This outcome is consistent with the TruPS serving the role of core regulatory capital, because one of the goals of capital is to minimize losses to the deposit insurance fund.

VI. UPON DECLARATION OF A SUPERVISORY EVENT BY THE OTS, THE CONDITIONAL EXCHANGE WAS AUTOMATIC.

47. For the TruPS to qualify as core capital, the Conditional Exchange, and the availability of the securities to WMB, needed to be entirely automatic and non-discretionary upon the issuance of an OTS directive. Core capital must be accessible to a bank in need not only

67 "To effect WMI's contribution of the TruPS to WMB, an Executive Vice President of WMI executed the Assignment Agreement, effective as of September 25, 2008, which transferred to WMB all of WMI's right, title and interest in the TRUPS, whether then owned or thereafter acquired." "Final Report of the Examiner, Joshua R. Hochberg," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated November 1, 2010, p. 162. See also: "Disclosure Statement For The Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated March 26, 2010, p. 6.

⁶⁶ WMI Form 8-K filed September 30, 2008.

JPM purchased "all of [WMB's] assets.... whether or not reflected on the books of [WMB] as of Bank Closing," Federal Deposit Insurance Corporation, "Purchase and Assumption Agreement Whole Bank," dated September 25, 2008, http://www fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf, accessed November 13, 2010, Section 3.1. Further, in a letter to the FDIC that was included as part of JPM's bid for WMB's assets, JPM stated as clarification to their bid that "[w]ith respect to the REIT preferred securities...the Office of Thrift Supervision will direct the [Conditional] [E]xchange and the holding company immediately will contribute the trust preferred securities it receives upon exchange to the bank." Letter from JPMorgan Chase to the FDIC, JPMCD 000002773.00006.

⁶⁹ "JPMorgan Chase acquired the banking operations of Washington Mutual Bank in a transaction facilitated by the Federal Deposit Insurance Corporation. All depositors are fully protected and there will be no cost to the Deposit Insurance Fund," Federal Deposit Insurance Corporation, "JPMorgan Chase Acquires Banking Operations of Washington Mutual," Press Release dated September 25, 2008, http://www.fdic.gov/news/news/press/2008/pr08085 html, accessed November 14, 2010.

to protect depositors and the FDIC insurance fund, but also, when appropriate, to allow the institution to continue operating as a viable entity. The automatic nature of the exchange ensures that the assets, which were placed in an off-balance sheet trust, were immediately available to WMB. In fact, the only way to ensure that the TruPS satisfied the crucial element of immediate access to capital was for the exchange feature to be automatic upon the OTS issuing a directive to effectuate the Conditional Exchange.

- 48. The return of the assets to WMB had to be immediate and therefore automatic. When faced with a shortage of capital, WMB needed immediate access to the mortgage assets so that these assets could be sold or used to offset any potential losses borne by the FDIC insurance fund.
- 49. Therefore, the regulatory intent of the Conditional Exchange provision was clearly to allow for an immediate transfer of assets from the trust back to the financial institution's books. This conclusion is implicit in all the disclosures made in the TruPS offering documents, and should have been recognized by sophisticated institutional investors to the extent that they acquired the TruPS prior to the Exchange Event's taking place.

VII. THE TRUPS WERE SOLD TO SOPHISTICATED INVESTORS

50. The Washington Mutual TruPS were issued through private placements under Rule 144A. Rule 144A requires that purchasers of such securities are qualified institutional buyers, defined as institutional investors that own at least \$100 million of unaffiliated

[&]quot;Basics for Bank Directors," Federal Reserve Bank of Kansas City, Division of Supervision and Risk Management, 2010, p. 24. See also: Saunders, A. and M. M. Cornett (2008), Financial Institutions Management: A Risk Management Approach, 6th Ed., New York, NY: McGraw-Hill Irwin, p. 586.

Nories A-2 Washington Mutual Cayman Preferred Securities were "offered and sold only to non-U.S. persons in transactions outside the United States in reliance on an exemption from registration pursuant to regulation S under the Securities Act." Cayman Offering Circular, cover page.

securities.⁷² The TruPS were also subject to regulation under the U.S. Investment Company Act of 1940, as amended (the "Investment Company Act"), which requires that securities may only be sold to "qualified purchasers." "Qualified purchasers" are individuals or companies that directly own at least \$5 million in investments, or institutional investors that own and manage at least \$25 million of investments.⁷⁴

- 51. Private placements regulated by Rule 144A do not require registration with the SEC. It is assumed that private placement investors are highly sophisticated and fully equipped to make informed investment decisions.⁷⁵
- 52. In practice, sophisticated institutional investors may have access to data and research that is typically not available to retail investors. Some of them may be regulated entities themselves. These sophisticated investors would understand that the treatment of TruPS as core capital would require WMI to support its banking subsidiary upon the declaration of an Exchange Event by the OTS by making the TruPS available to WMB.
- 53. The TruPS offering documents made clear that the securities, which were offered at \$100,000 per trust security, 76 would be considered core capital. 77 The offering documents outline the circumstances under which the OTS could direct an "Exchange Event" that would result in the TruPS being "automatically exchanged" for depositary

⁷² Electronic Code of Federal Regulations, "Title 17: Commodity and Securities Exchanges, Part 230—General Rules and Regulations, Securities Act of 1933," § 230.144A.(7)(a)(1)(i), https://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=4534f31f862f17dd7f8ed2383715011e&rgn=div5&view=text&node=17:2.0.1.1.12&idno=17#17:2.0.1.1.12.0.32.29, accessed November 8, 2010.

⁷³ Trust II Offering Circular, cover page.

⁷⁴ Investment Company Act of 1940, Section 2(a)(51)(A).

⁷⁵ Bethel, J. E. and E. R. Sirri (1998), "Express Lane or Tollbooth in the Desert? The SEC's Framework for Security Issuance," *Journal of Applied Corporate Finance*, 2008, p. 27.

⁷⁶ All TruPS were offered at \$100,000, with the exception of Series A-2 of Cayman, which was offered at \$10,000. See Cayman Offering Circular, cover page.

⁷⁷ See: Cayman Offering Circular, p. 2; Trust I Offering Circular, p. 2; Trust II Offering Circular, p. 2; Trust III Offering Circular, p. 2; Trust IV Offering Circular, p. 2.

shares representing WMI preferred stock.⁷⁸ A sophisticated investor should have known that the TruPS could only be treated as core capital if the TruPS and their underlying assets would be available to the banking subsidiary (WMB) if needed to maintain adequate capitalization. Given that the OTS agreed to treat the TruPS as core capital, that it had the right to declare an Exchange Event in the face of WMB's financial distress, and that an Exchange Event would result in the automatic exchange of TruPS for WMI preferred stock, the sophisticated investors eligible to purchase the TruPS should have understood that the underlying assets would be made available by WMI to WMB.

VIII. THE FACT THAT TRUPS WERE CORE CAPITAL WAS FULLY DISCLOSED AND UNDERSTOOD BY THE MARKET

VIII-A. In Its SEC Filings, WMI Repeatedly Disclosed That The TruPS Received Core Regulatory Capital Treatment.

54. In its SEC filings, WMI repeatedly disclosed that the TruPS received core regulatory capital treatment from the OTS. In the Form 8-Ks that were filed with the SEC shortly after the issuance of each security, WMI explicitly stated that the TruPS in question had received treatment as core capital by the OTS. For instance, following the issuance of the Trust I and Cayman TruPS, WMI filed a Form 8-K stating:

WMB has received confirmation from the Office of Thrift Supervision (the "OTS") that the Company Preferred Securities [the TruPS] are eligible for treatment as core capital of WMB under the OTS' applicable regulatory capital regulations and intends to treat the Company Preferred Securities accordingly.⁷⁹

⁷⁸ See: Cayman Offering Circular, pp. 11-12; Trust I Offering Circular, p. 11; Trust II Offering Circular, p. 12; Trust III Offering Circular, p. 12; Trust IV Offering Circular, p. 15.

⁷⁹ WMI Form 8-K filed March 7, 2006.

- Similar Form 8-Ks were issued and filed with the SEC for the subsequent TruPS, in all cases emphasizing that the TruPS received core capital treatment from the OTS.⁸⁰
- 55. Furthermore, WMI repeatedly stated in its annual SEC filings (Form 10-Ks) that the TruPS received core capital treatment. The WMI annual report filed soon after the issuance of the Cayman and Trust I TruPS in 2006 states:

As a result of recently revised guidance from the Company's rating agencies that allows high equity content securities, such as preferred stock and hybrid capital instruments, to be included as core capital elements within the capital structures of financial institutions, the Company initiated a review of its capital funding and issuance strategies, and adopted a capital management program that is consistent with the revised guidance. As part of this program, the Company issued \$2 billion of high equity content securities in March 2006 through Washington Mutual Preferred Funding LLC, an indirect subsidiary of Washington Mutual Bank. As core capital elements, such securities will be included as equity components within the Company's tangible equity to total tangible assets ratio.

Again, WMI's annual report filed in 2007 stated that its "primary regulator, the Office of Thrift Supervision, has confirmed that such preferred securities are eligible for inclusion in WMB's core capital for regulatory purposes." Further, the filing stated that in addition to the OTS, ratings agencies also considered TruPS to receive core capital treatment:

During 2006, the Company issued \$2.5 billion of high equity content securities through Washington Mutual Preferred Funding LLC, an indirect subsidiary of Washington Mutual Bank, and approximately \$500 million of perpetual preferred stock. While such instruments have long been acknowledged by the OTS as qualifying elements in the composition of financial institution

⁸⁰ WMI Form 8-Ks filed: December 18, 2006; May 30, 2007; October 30, 2007.

⁸¹ WMI Form 10-K filed March 15, 2006, p. 49, emphasis added.

⁸² WMI Form 10-K filed March 1, 2007, p. 125.

core capital structures, the rating agencies have only recently taken a similar view. Such instruments are included as equity components within the Company's tangible equity to total tangible assets ratio. 83

A similar statement in WMI's annual report filed in 2008 reinforces the view of the TruPS as core capital.⁸⁴

VIII-B. Analysts and Credit Rating Agencies Understood that TruPS were Core Capital

57. During the time of the TruPS issuances, analysts acknowledged that WMI was seeking both funding and treatment of the TruPS as core regulatory capital. Said differently, the capital treatment was understood and discussed by market participants. Before the first TruPS were issued, a *CreditSights* analyst wrote,

Given the lack of momentum from the organic franchise, the company's best option is to recapitalize via the issuance of hybrid capital securities (REIT preferreds as well), and use the proceeds to buy back shares...Washington Mutual noted that it had not been active in issuing hybrids while awaiting for clarification from its primary regulators (the OTS) and rating agencies on the capital treatment for these instruments.⁸⁵

58. On October 17, 2007, WMI reported Q3 2007 earnings in-line with low pre-announced guidance and revised guidance downward.⁸⁶ Analysts reduced their price targets and

⁸³ WMI Form 10-K filed March 1, 2007, p. 64, emphasis added.

⁸⁴ WMI Form 10-K filed February 29, 2008, p. 70: "During 2007, the Company issued approximately \$1.5 billion of perpetual, non-cumulative preferred securities through its indirect subsidiary, [Washington Mutual Preferred Funding] LLC. While the high equity content characteristics of these securities have long been acknowledged by the OTS as qualifying elements in the composition of financial institutions' core capital structures, the rating agencies have only recently taken a similar view. Accordingly, such securities are included as equity components within the Company's tangible equity to total tangible assets ratio, estimated Tier I leverage ratio, and estimated total risk-based capital ratio."

^{85 &}quot;Washington Mutual: One on One - Optimizing Cap Structure," *CreditSights*, February 21, 2006.

⁸⁶ "Washington Mutual, Inc. Reducing to Sell, Loss Provision for 2007 Guided Higher Yet Again," Bank of America, October 18, 2007; WMI Form 8-K filed October 17, 2007.

ratings, citing credit cost and other pressures.⁸⁷ The next day, a *CreditSights* analyst stated:

Washington Mutual, Inc., is not currently subject to any regulatory capital requirements. However, each of its banking subsidiaries is subject to OTS capital requirements.... Based on our calculations, we believe that WaMu has capacity to issue additional hybrid securities of approximately \$1.9 billion. In light of another weak quarter expected in 4Q07, we sense that WaMu may have to issue capital instruments in order to support its dividend. ⁸⁸

59. Other analysts were also aware that the TruPS received core capital treatment from the OTS. In March 2006, a Lehman Brothers analyst emphasized that the TruPS were issued to raise core capital:

As a result of recent revised guidance from rating agencies allowing high equity content securities, such as preferred stock and hybrid instruments, to be included in core capital elements, WM issued \$2 billion of high equity content securities in March 2006.⁸⁹

A 2007 Lehman Brothers report further reinforced that the TruPS were core capital:

Capital Strengthened by Preferreds, Dividend Cut. Since the end of 3Q, WM has raised an additional \$3.4 billion in preferred capital (including \$500 million of trust preferreds sold at the end of October). In addition, the company's dividend cut to an annual rate of \$0.60 from \$2.24 will conserve \$1.4 billion of capital next year. At WM's November 7th Investor Day, management estimated

For example: a Bear Stearns analyst stated in regards to the reduction of ESP target, "We are maintaining our Underperform rating on Washington Mutual and lowering our 2008 EPS estimate to \$2.25 from \$3.00, well below the prior consensus of \$3.50." "Reducing Estimates Based on Higher Loss Provision Expense," *Bear Stearns*, October 18, 2007. A Bank of America analyst stated, "While WM's 3Q net income of \$210 million (\$.23/share) was in line with the pre-announced (on October 5) 75% earnings decline from a year ago, the accelerating rate of credit erosion across its mortgage portfolio in 3Q, together with a further \$500-700 million hike in guidance (to \$2.7-2.9 billion) for 2007's loan loss provision, forms the basis for our downgrade of WM's fixed income securities from Neutral to Sell." "Washington Mutual, Inc. Reducing to Sell, Loss Provision for 2007 Guided Higher Yet Again," *Bank of America*, October 18, 2007. A Citi analyst reported, "We are changing our Fundamental Credit Opinion to Deteriorating, Low Risk from Stable, Low Risk, because of the decline in the company's profitability, asset quality and reserve coverage levels." "Bleak House," *Citi*, October 18, 2007.

^{88 &}quot;WaMu: 3Q07 Core Miss, No Sign of the Bottom," CreditSights, October 18, 2007.

^{89 &}quot;Washington Mutual Company Update," Lehman Brothers, March 17, 2006.

the company had approximately \$3 billion in excess capital above regulatory "well capitalized" requirements. 90

A 2008 report by a *CreditSights* analyst emphasized that the OTS viewed WMB's TruPS as core capital:

As a prudent safeguard, OTS limits the amount of Washington Mutual Bank's Tier I (core) capital that may be comprised of preferred securities to an amount that cannot exceed 25% of its Tier I capital. At December 31, 2007, the aggregate amount of preferred securities issued by WMPF [Washington Mutual Preferred Funding], LLC totaled approximately \$3.91 billion (net of expense) which represents 17.5% of its \$22.4 billion Tier I (core) capital.⁹¹

- 60. Analysts anticipated that WMI would down-stream capital consistent with the fact that the TruPS were considered core capital.
- 61. A *CreditSights* analyst stated in September 2008:

We note that in a bankruptcy or regulatory intervention situation, parent company bondholders are most at risk. This is because the parent company is expected to act as a source of strength for the thrift level. So, its remaining resources could be limited if it has down-streamed most of its capital resources to the thrift level prior to a regulatory intervention. 92

Thus, in the weeks preceding WMB's failure in September 2008, analysts were aware of the possibility of down-streaming.⁹³

62. Even before September 2008, the market recognized WMI's role as potentially providing support to WMB. In March of 2008, *CreditSights* reported that:

^{90 &}quot;Washington Mutual Company Update," Lehman Brothers, December 13, 2007, emphasis added.

^{91 &}quot;WaMu: 10-K Cut: Provisions Pound 2008 Outlook - Internal/External Capital Capacity Limited," CreditSights, March 3, 2008, emphasis added.

^{92 &}quot;WaMu: Update of Credit/Capital/Liquidity Dynamics," CreditSights, September 8, 2008, emphasis added.

⁹³ See "Body blows endure, but capital absorbing pain; Upgrade to Neutral," *Goldman Sachs*, September 12, 2008, for a discussion of moving other resources from WMI to the bank and the analyst's belief that "it is likely."

"Despite our current comfort level on the parent company's liquidity level, we note that the holding company structure of banks and thrifts requires that the parent level act as a source of strength to the bank/thrift level. This means that in a stress scenario, the holding company could be required to down-stream capital to the bank level." "94

63. Credit ratings agencies also viewed Washington Mutual TruPS as core capital. Shortly after the issuance of Washington Mutual's first TruPS, *Moody's* wrote, "In 1Q06, Moody's assigned Baa2 ratings to the Exchangeable Perpetual Non-cumulative Preferred Securities being issued by Washington Mutual Preferred Funding (Cayman) Ltd. and to Washington Mutual Preferred Funding Trust I. **Moody's assigned 75% equity-like**treatment to the \$2 billion issued."

In 2008, a *CreditSights* analyst further reinforced that regulators and credit ratings agencies agreed that the TruPS were considered core capital:

During 2007, WaMu issued approximately \$1.5 billion of perpetual, non-cumulative preferred securities through its indirect subsidiary, [Washington Mutual Preferred Funding] LLC. While the high equity content characteristics of these securities have long been acknowledged by the OTS as qualifying elements in the composition of financial institutions' core capital structures, the rating agencies have only recently taken a similar view. Accordingly, such securities are included as equity components within the Company's tangible equity to total tangible assets ratio, estimated Tier I leverage ratio, and estimated total risk-based capital ratio. 197

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⁹⁴ "WaMu: Systemic or Not? Review of Credit/Capital/Liquidity Metrics," *CreditSights*, March 27, 2008, emphasis added.

^{95 &}quot;Summary Opinion: Washington Mutual, Inc.," *Moody's Investors Service*, April 6, 2006, emphasis added.

⁹⁶ Similar language as SEC filings. For instance, Washington Mutual Inc. 2006 Form 10-K states, "While [Washington Mutual Preferred Funding] instruments have long been acknowledged by the OTS as qualifying elements in the composition of financial institution core capital structures, the rating agencies have only recently taken a similar view. Such instruments are included as equity components within the Company's tangible equity to total tangible assets ratio." WMI Form 10-K filed March 1, 2007, p. 64.

⁹⁷ "WaMu: 10-K Cut: Provisions Pound 2008 Outlook - Internal/External Capital Capacity Limited," *CreditSights*, March 3, 2008, emphasis added.

IX. THE EXISTENCE OF THE CONDITIONAL EXCHANGE CLAUSE WAS FULLY DISCLOSED AND KNOWN TO THE MARKET

64. In its filings with the SEC, WMI was explicit about the Conditional Exchange feature and under what circumstances an exchange into WMI preferred equity could occur. In the Form 8-Ks filed after the issuance of each TruPS, WMI made statements explaining the Conditional Exchange. For instance, the Form 8-K filed after the issuance of the Trust I and Cayman TruPS states:

If the OTS so directs following the occurrence of an Exchange Event...each WaMu Cayman Preferred Security and each Trust Security will be automatically exchanged for a like amount of depositary shares representing a 1/1000th of a share of specified classes of preferred stock...of WMI. "Exchange Event" means (a) WMB becoming "undercapitalized" under the OTS' "prompt corrective action" regulations, (b) WMB being placed into conservatorship or receivership or (c) the OTS, in its sole discretion, directing such exchange in anticipation of WMB becoming "undercapitalized" in the near term or taking supervisory action that limits the payment of dividends, as applicable, by WMB, and in connection therewith, directs such exchange.

These statements appear in subsequent Form 8-Ks, reiterating that the exchange would happen automatically upon the occurrence of a qualifying event.

- 65. Similar disclosures were made multiple times throughout the offering circulars for all five issues of Washington Mutual TruPS. Marketing materials shown to potential investors also warn investors of the risks associated with an Exchange Event wherein they become preferred stockholders of WMI. 101
- 66. Shortly after the issuance of the first TruPS, the market was aware of the Conditional Exchange feature and its associated risks. In March 2006, a *Merrill Lynch* analyst wrote:

⁹⁸ WMI Forms 8-K filed: March 7, 2006; December 18, 2006; May 30, 2007; October 30, 2007.

⁹⁹ WMI Form 8-K filed March 7, 2006.

Cayman Offering Circular, pp. 2, 11-12; Trust I Offering Circular, pp. 2, 11; Trust II Offering Circular, pp. 2, 12; Trust III Offering Circular, pp. 2, 12; Trust IV Offering Circular, pp. 2, 15.

¹⁰¹ Washington Mutual Cayman and Trust I Roadshow Presentation.

We encourage investors to think of this more as preferred issued out of the holding company and not as some asset collateralized transaction. We believe this for two reasons. First, investors do not have a perfected security in the home equity loans. Furthermore, when investors most likely want to have access to the assets, they will not be able to because they will be exchanged into the holding company preferred.¹⁰²

Therefore, the Conditional Exchange feature was well established from the time of Washington Mutual's earliest TruPS offerings.

X. MOST PLAINTIFFS BOUGHT AFTER THE EXCHANGE EVENT AND AFTER THE DOWN-STREAMING HAD OCCURRED AND STAND TO GAIN DISPROPORTIONATELY IF THEIR DEMANDS ARE MET

67. The Plaintiffs are not the original investors in the TruPS. Although Plaintiffs claim to have purchased TruPS, Plaintiffs primarily purchased WMI preferred stock. These purchases occurred after the OTS's declaration of the Exchange Event, after the occurrence of the Conditional Exchange, and after the TruPS were down-streamed by WMI to WMB. Plaintiffs made these purchases at pennies on the dollar relative to the liquidation preference of the TruPS. This is consistent with the Plaintiffs having purchased preferred equity of WMI for speculative purposes. The Plaintiffs stand to reap enormous profits—potentially on the order of a billion dollars—if the Conditional Exchange and down-streaming are reversed by the Court. 103

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^{102 &}quot;WAMU Volatility Creates Better Value," Merrill Lynch, March 3, 2006, emphasis added.

Plaintiffs belong to ten investment fund families and thirty individual funds within those fund families. (1) The Black Horse funds are comprised of the Black Horse Capital Master Fund Ltd., Black Horse Capital, LP, and Black Horse Capital (QP) LP. (2) The Greywolf funds are comprised of the Greywolf Overseas Fund and Greywolf Capital Partners II. (3) The Lonestar funds are comprised of Lonestar Partners L.P. (4) The Paige funds are comprised of Paige Opportunity Partners LP and Paige Opportunity Partners Master Fund. (5) The Pine River funds are comprised of the Nisswa Master Fund Ltd., Nisswa Convertibles Master Fund Ltd., Nisswa Fixed Income Master Fund Ltd., Pines Edge Value Investors Ltd., and LMA SPC For and On Behalf of the MAP 89 Segregated Portfolio. (6) The Riva Ridge funds are comprised of the Mariner LDC, Riva Ridge Master Fund, Ltd., and Riva Ridge Capital Management LP. (7) The Scoggin funds are comprised of the Guggenheim Portfolio Company VII, LLC, Scoggin International Fund Ltd., Scoggin Capital Management II LLC, and Scoggin Worldwide Fund Ltd. (8) The Visium funds are comprised of Visium Global Master Fund, Ltd. (9) The VR Global Partners funds are comprised of VR Global Partners, L.P. (10) The Whitebox funds are comprised of HFR RVA Combined Master Trust, IAM Mini-Fund 14 Limited, Pandora Select Partners, LP, Whitebox Asymmetric Partners LP, Whitebox Combined Partners, LP, Whitebox Convertible Arbitrage Partners, LP, Whitebox Hedged High Yield Partners, LP, and Whitebox Special Opportunities Fund LP, Series B.

- 68. I have analyzed trading data produced by the Plaintiffs and made available to me by Counsel as well as records attached to the Plaintiffs' responses to interrogatories. 104
- 69. I find that the majority of Plaintiffs' trading activity occurs after the Exchange Event and automatic exchange in September 2008. In Exhibits 6 through 8, I calculate the net quantity purchased by the Plaintiffs during various periods. On average, the net quantity of WMI preferred equity (which the Plaintiffs refer to as TruPS) purchased post September 26, 2008 as a proportion of total net purchases over all dates is 95.23%. This means that nearly all purchases by the Plaintiffs were made after the Conditional Exchange had occurred. For funds in the following eight Plaintiff fund families, 100% of their trading occurred after the automatic exchange had taken place: Black Horse, Greywolf, Lonestar, Paige, Riva Ridge, Visium, VR Global, and Whitebox.
- 70. In fact, for these eight Plaintiff fund families, all trades occur during 2010, which is more than a year after WMB's collapse. Seven Plaintiff fund families made purchases after the

Trading data for the Scoggin fund family includes trades by Opus, a fund that is not named in the complaint. See: BLACK000001; BLACK000095-100; PAIGE0000002; PAIGE0000005; PAIGE0000007; SCOG0000007-8; RIVA000001-6; RIVA000009-14; VRCAP000019; Supplemental Responses and Objections of Plaintiffs Greywolf Capital Partners II LP, and Greywolf Capital Overseas Master Fund to Washington Mutual, Inc. JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010; Supplemental Responses and Objections of Plaintiff Lonestar Partners LP to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010; Supplemental Responses and Objections of Plaintiffs Pines Edge Value Investors LTD., LMA SPC, For and On Behalf of Map 89 Segregated Portfolio, Nisswa Convertibles Master Fund LTD., and Nisswa Fixed Income Master Fund LTD. to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010; Supplemental Responses and Objections of Plaintiffs Riva Ridge Capital Management LP and Riva Ridge Master Fund, LTD. to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010; Supplemental Responses and Objections of Plaintiffs Scoggin Capital Management II LLC, Scoggin International Fund LTD., and Scoggin Worldwide Fund LTD. to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010; Supplemental Responses and Objections of Plaintiff Visium Global Fund, LTD. to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010; Supplemental Responses and Objections of Plaintiffs Whitebox Asymmetric Partners LP, Whitebox Combined Partners, LP, Whitebox Convertible Arbitrage Partners, LP, Whitebox Hedged High Yield Partners, LP and Whitebox Special Opportunities LP, Series B to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.

¹⁰⁵ Net quantity purchased is defined as total purchases net sales of what the Plaintiffs refer to as TruPS.

filing of the Complaint dated July 6, 2010 ("the Complaint"). These post-Complaint purchases amounted to \$256.1 million in liquidation preference. Exhibit 5 graphically shows the timing of Plaintiffs' trading activity.

- 71. Plaintiffs stand to gain disproportionately from their purchases of WMI preferred equity if the Conditional Exchange is reversed. I find that the majority of Plaintiffs made their purchases at very low prices. On average, Plaintiffs paid only 6.24 cents on the dollar relative to the par value of the TruPS they claim to have purchased. This is equivalent to a 93.76% discount off face value.¹⁰⁸
- According to the Examiner's Report, the TruPS are currently valued at \$4 billion, their liquidation preference. Plaintiffs hold preferred stock of WMI, which, pre-Conditional Exchange, would have been equivalent to approximately \$1 billion in liquidation preference of the TruPS. If the Court were to reverse the Conditional Exchange, Plaintiffs would claim profits well in excess of what they paid for the securities, which were largely purchased after the failure of WMB and the bankruptcy filing of WMI, and in substantial part after the filing of the Complaint.

The seven fund families that made purchases after the filing of the complaint were: Black Horse, Greywolf, Lonestar, Pine River, Scoggin, Visium, and Whitebox.

¹⁰⁷ Even offsetting for sales, the net quantity purchased after the filing of the Complaint amounts to \$92.1 million in liquidation preference.

Pricing data is not available for Scoggin transactions after July 19, 2010. Therefore calculations of discounts include only Scoggin purchases July 19, 2010 and earlier.

¹⁰⁹ "Final Report of the Examiner, Joshua R. Hochberg," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated November 1, 2010, p. 17.

Dated: November 15, 2010

Signed:

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"The Technology of Risk and Return," <u>American Economic Review</u>, June, 1981.

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"Industry Conditions and the Terms of Bank Lending" with A. Kizilaslan.

"Distress Costs in Crisis: The Determinants of Debt Restructurings and Bankruptcy" with C. Demiroglu.

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SERVICE ACTIVITIES:

Editor: Journal of Banking and Finance, 2007-present.

Associate Editor: Journal of Financial Economics, 1993-present.

Associate Editor: Journal of Financial Services Research, 1989-present.

Associate Editor: <u>Journal of Managerial and Decision Economics</u>, 1988-

present.

Editorial Board: Federal Reserve Bank of New York: Economic Review,

1997-2007.

Academic Board: Turnaround Management Association, 1990-2002.

Associate Editor: Journal of Banking and Finance, 1999-2001

Associate Editor: Journal of Finance, 1988-2000.

Co-Editor: Journal of Financial Intermediation, 1988-1999.

Associate Editor: <u>Journal of Financial and Quantitative Analysis</u>, 1982-1984.

Reviewer: <u>Journal of Finance</u>; <u>Journal of Money</u>, <u>Credit and Banking</u>; <u>Journal of Financial Economics</u>; <u>Journal of Financial Management</u>; <u>Journal of Banking and Finance</u>; <u>Journal of Business and Economics</u>; <u>Journal of Monetary Economics</u>; <u>American Economic Review</u>; <u>Journal of Political</u>

<u>Economy</u>; <u>Review of Financial Studies</u>; <u>Journal of Corporate Finance</u>; <u>Journal of Law and Economics</u>; <u>Journal of Accounting and Economics</u>.

Program Committee: Financial Management Association, Western Finance Association, American Finance Association, European Finance Association and Utah Winter Finance Conference.

CONSULTING/EXECUTIVE EDUCATION ACTIVITIES:

Board of Directors/Chairman, ID², Inc.

Senior Advisor, Cornerstone Research.

Independent Distribution Consultant, Janus Funds

Advisory Board Big Brothers Big Sisters of North Central Florida 2000-present.

Advisory Board and Board of Directors, SunTrust Banks of Florida 1989-2006.

Consultant, Federal Reserve Bank of New York, 1997, 2004.

Consultant, Federal Reserve Board of Governors, 1995, 1998.

Research Director, Garn Institute of Finance, Salt Lake City, Utah, 1987-1989.

Instructor, Pacific Coast Banking School: Commercial Lending, Financial Markets, Workout Lending.

Instructor, Bank Board of Directors School: Workout Lending.

Instructor, Swiss National Bank, Gerzensee, Switzerland, Bank Safety and Soundness Regulation.

Executive Seminars on bank deregulation, valuation, venture capital, strategic management, lender liability, and asset and liability management.

Expert Witness: Cases involving antitrust, portfolio management, securities valuation, bank management, valuation, and regulatory matters.

Consultant: Product pricing, valuation, portfolio management, utilities regulation, valuation of securities, mergers and acquisitions, and risk management.

Consultant to the Office of the Comptroller of the Currency, 1982-1983: Bank and Thrift Mergers.

Consultant to the Investment Company Institute, 1983: Bank Offerings of Mutual Funds.

Consultant to the FDIC, Costs of Resolving Bank and Thrift Failures.

Recipient of a grant from MidAmerica Institute to study management compensation in banking, 1992.

Recipient of grant from Federal Home Loan Bank Board to study the information content of savings and loan accounting information.

Member: Research Committee: Garn Institute of Finance, 1989-1992.

Research Associate at the Business Regulation Study Center, 1980.

AWARDS:

Valedictorian, Michigan State University, 1973.

Harry R. Jacobs, Professional Service Award, University of Oregon, 1985.

Outstanding Teaching Award: MBA Association, University of Oregon, 1985.

Outstanding Teaching Award: MBA Association, University of Florida, 1994, 1996, 1998, 1999, 2000.



Testimony of Dr. Christopher M. James In the Previous Four Years

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Morton P. Levine, as Trustee for the Estate of Flooring America, Inc. and Related Debtors, et al., In the Superior Court of Fulton County State of Georgia, No. 2002CV54331, deposition, 2008.

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- Wachovia Preferred Funding Corporation Offering Circular dated June 4, 2003.
- Washington Mutual Preferred Funding (Cayman) I Ltd. Offering Circular dated February 24, 2006.
- Washington Mutual Preferred Funding Trust I Offering Circular dated February 24, 2006.
- Washington Mutual Preferred Funding Trust II Offering Circular dated December 6, 2006.
- Washington Mutual Preferred Funding Trust III Offering Circular dated May 21, 2007.
- Washington Mutual Preferred Funding Trust IV Offering Circular dated October 18, 2007.

Legal Documents and Documents Produced in Discovery

- Complaint for Declaratory and Other Relief, filed July 6, 2010.
- Debtors' January 2009 Monthly Operating Report, filed March 3, 2009.
- "Disclosure Statement For The Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the United States Bankruptcy Code," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated March 26, 2010.
- "Final Report of the Examiner, Joshua R. Hochberg," *In re Washington Mutual, Inc., et al., Debtors*, Case No. 08-12229, dated November 1, 2010.
- Letter from JPMorgan Chase to the FDIC, JPMCD_000002773.00001–26.
- BLACK000001.
- BLACK000095-100.
- PAIGE000002.

- PAIGE000005.
- PAIGE000007.
- SCOG000007-8.
- RIVA00001-6.
- RIVA00009-14.
- VRCAP000019.
- Supplemental Responses and Objections of Plaintiffs Greywolf Capital Partners II LP, and Greywolf Capital Overseas Master Fund to Washington Mutual Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.
- Supplemental Responses and Objections of Plaintiff Lonestar Partners LP to Washington Mutual Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.
- Supplemental Responses and Objections of Plaintiffs Pines Edge Value Investors LTD., LMA SPC, For and On Behalf of Map 89 Segregated Portfolio, Nisswa Convertibles Master Fund LTD., and Nisswa Fixed Income Master Fund LTD. to Washington Mutual Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.
- Supplemental Responses and Objections of Plaintiffs Riva Ridge Capital Management LP and Riva Ridge Master Fund, Ltd. to Washington Mutual, Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.
- Supplemental Responses and Objections of Plaintiffs Scoggin Capital Management II LLC, Scoggin International Fund LTD., and Scoggin Worldwide Fund LTD. to Washington Mutual Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.
- Supplemental Responses and Objections of Plaintiff Visium Global Fund, LTD. to Washington Mutual Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.
- Supplemental Responses and Objections of Plaintiffs Whitebox Asymmetric Partners LP, Whitebox Combined Partners LP, Whitebox Convertible Arbitrage Partners LP, Whitebox Hedged High Yield Partners LP and Whitebox Special Opportunities LP, Series B to Washington Mutual Inc., JPMorgan Chase & Co. and JPMorgan Chase Bank, National Association's First Set of Interrogatories dated October 21, 2010.

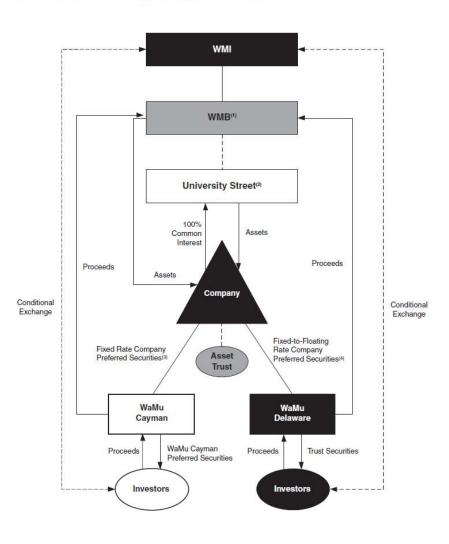
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Organizational Structure Washington Mutual TruPS Source: Trust I Offering Circular

The following diagram outlines the relationship among WMI, WMB, University Street, the Company, the Asset Trust, WaMu Delaware, WaMu Cayman, purchasers of the Trust Securities and purchasers of the WaMu Cayman Preferred Securities:



⁽¹⁾ New American Capital, Inc., not shown here, is WMB's direct parent.

⁽²⁾ Marion Holdings, Inc., not shown here, is University Street's direct parent.

⁽³⁾ Transferred by WMB to WaMu Cayman.

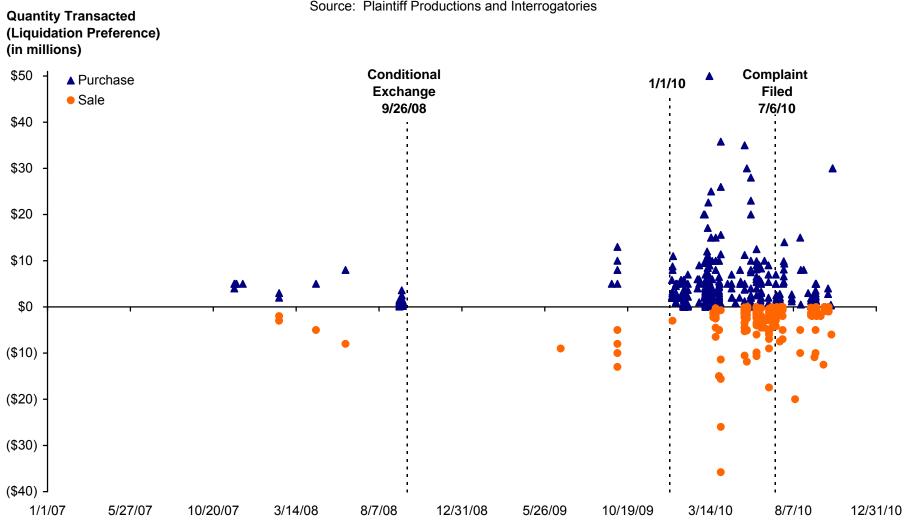
⁽⁴⁾ Transferred by WMB to WaMu Delaware.



Timeline of Plaintiffs' Trading Activity of Washington Mutual **Trust Preferred Securities & WMI Preferred Equity**

2007 - 2010

Source: Plaintiff Productions and Interrogatories





Summary of Plaintiffs' Transactions in WMI Preferred Equity After 9/26/08

Source: Complaint ¶¶ 8-37; Plaintiff Productions and Interrogatories

Net Quantity
Purchased After
9/26/08 as % of

		3/20/00 a5 /0 UI					
	Net Quantity	Net Quantity	Quantity	Average Discount	Average Discount		
Plaintiff Fund Family [1]	Purchased After 9/26/08 [2][3]	Purchased Over All Dates [2][3]	Purchased	for Purchases After 9/26/08 [4]	for All Purchases [4]		
			After 9/26/08 [3][4]				
Black Horse	\$55,500,000	100.00%	\$55,500,000	95.17%	95.17%		
Greywolf	\$186,640,000	100.00%	\$186,640,000	94.79%	94.79%		
Lonestar	\$79,390,000	100.00%	\$125,290,000	96.03%	96.03%		
Paige	\$16,500,000	100.00%	\$16,500,000	96.00%	96.00%		
Pine River	\$282,829,000	92.18%	\$345,829,000	96.65%	87.51%		
Riva Ridge	\$35,000,000	100.00%	\$35,000,000	95.95%	95.95%		
Scoggin [5]	\$243,787,000	89.21%	\$408,888,000	96.29% [6]	91.57% [6]		
Visium	\$74,090,000	100.00%	\$74,090,000	96.13%	96.13%		
VR Global	\$69,474,000	100.00%	\$69,474,000	96.13%	96.13%		
Whitebox	\$24,450,000	100.00%	\$398,981,000	96.39%	96.39%		
All Plaintiffs	\$1,067,660,000	95.23%	\$1,716,192,000	96.11% [6]	93.76% [6]		

Note:

- [1] Plaintiff trading data is consolidated by Fund Family.
- [2] Transactions include purchases and sales.
- [3] Quantity represents liquidation preference.
- [4] Transactions include only purchases.
- [5] Trading data for this Fund Family includes trades by Opus, a fund that is not explicitly named in the complaint.
- [6] Pricing data is not available for Scoggin transactions after 7/19/10. Therefore calculations of discounts include only transactions prior to and including 7/19/10.



Summary of Plaintiffs' Transactions in WMI Preferred Equity After 1/1/10

Source: Complaint ¶¶ 8-37; Plaintiff Productions and Interrogatories

Net Quantity Purchased After 1/1/10 as % of Net

		17 17 10 do 70 01 110t			
Plaintiff Fund Family [1]	Net Quantity Purchased After 1/1/10 [2][3]	Quantity Purchased Over All Dates [2][3]	Quantity Purchased After 1/1/10 [3][4]	Average Discount for Purchases After 1/1/10 [4]	Average Discount for All Purchases [4]
Black Horse	\$55,500,000	100.00%	\$55,500,000	95.17%	95.17%
Greywolf	\$186,640,000	100.00%	\$186,640,000	94.79%	94.79%
Lonestar	\$79,390,000	100.00%	\$125,290,000	96.03%	96.03%
Paige	\$16,500,000	100.00%	\$16,500,000	96.00%	96.00%
Pine River	\$286,829,000	93.48%	\$304,829,000	96.39%	87.51%
Riva Ridge	\$35,000,000	100.00%	\$35,000,000	95.95%	95.95%
Scoggin [5]	\$243,787,000	89.21%	\$408,888,000	96.29% [6]	91.57% [6]
Visium	\$74,090,000	100.00%	\$74,090,000	96.13%	96.13%
VR Global	\$69,474,000	100.00%	\$69,474,000	96.13%	96.13%
Whitebox	\$24,450,000	100.00%	\$398,981,000	96.39%	96.39%
All Plaintiffs	\$1,071,660,000	95.58%	\$1,675,192,000	96.08 % [6]	93.76% [6]

Note:

- [1] Plaintiff trading data is consolidated by Fund Family.
- [2] Transactions include purchases and sales.
- [3] Quantity represents liquidation preference.
- [4] Transactions include only purchases.
- [5] Trading data for this Fund Family includes trades by Opus, a fund that is not explicitly named in the complaint.
- [6] Pricing data is not available for Scoggin transactions after 7/19/10. Therefore calculations of discounts include only transactions prior to and including 7/19/10.



Summary of Plaintiffs' Transactions in WMI Preferred Equity After 7/6/10

Source: Complaint ¶¶ 8-37; Plaintiff Productions and Interrogatories

Net Quantity Purchased After 7/6/10 as % of Net

	770/10 as 70 of Net				
Plaintiff Fund Family [1]	Net Quantity Purchased After 7/6/10 [2][3]	Quantity Purchased Over All Dates [2][3]	Quantity Purchased After 7/6/10 [3][4]	Average Discount for Purchases After 7/6/10 [4]	Average Discount for All Purchases [4]
,			F 4F 4		
Black Horse	\$5,500,000	9.91%	\$5,500,000	95.25%	95.17%
Greywolf	\$86,940,000	46.58%	\$86,940,000	93.70%	94.79%
Lonestar	-\$43,900,000	-55.30%	\$2,000,000	93.63%	96.03%
Paige	\$0	0.00%	\$0	_	96.00%
Pine River	\$79,000	0.03%	\$15,079,000	95.47%	87.51%
Riva Ridge	\$0	0.00%	\$0	_	95.95%
Scoggin [5]	\$73,852,000	27.02%	\$133,953,000	94.63% [6]	91.57% [6]
Visium	\$7,600,000	10.26%	\$7,600,000	95.50%	96.13%
VR Global	\$0	0.00%	\$0	_	96.13%
Whitebox	-\$38,000,000	-155.42%	\$5,000,000	94.00%	96.39%
All Plaintiffs	\$92,071,000	8.21%	\$256,072,000	94.31% [6]	93.76% [6]

Note:

- [1] Plaintiff trading data is consolidated by Fund Family.
- [2] Transactions include purchases and sales.
- [3] Quantity represents liquidation preference.
- [4] Transactions include only purchases.
- [5] Trading data for this Fund Family includes trades by Opus, a fund that is not explicitly named in the complaint.
- [6] Pricing data is not available for Scoggin transactions after 7/19/10. Therefore calculations of discounts include only transactions prior to and including 7/19/10.

Ex. 5B

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

	- X	
In re	:	Chapter 11
	:	
WASHINGTON MUTUAL, INC., et al.,	:	Case No. 08-12229 (MFW
	:	
Debtors.	:	Jointly Administered
	- X	
	:	
Black Horse Capital LP et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Adversary Proceeding
	:	No. 10-51387 (MFW)
JPMorgan Chase Bank, N.A. et al,	:	
	:	
Defendants.	:	
	- v	

EXPERT REPORT OF ALLEN FERRELL, PH.D.

I. QUALIFICATIONS

- 1. I am the Greenfield Professor of Securities Law at Harvard Law School where I have taught since 1998. I am also a faculty associate at the Kennedy School of Government at Harvard, a member of the American Law Institute Project on the Application of U.S. Financial Regulations to Foreign Firms and Cross-Border Transactions, a research associate at the European Corporate Governance Institute, and a member of the ABA Task Force on Corporate Governance. I formerly was a member of the Board of Economic Advisors to the Financial Industry Regulatory Authority (("FINRA") the largest independent securities regulator in the United States), an executive member of the American Law School section on securities regulation, and the Chairperson of Harvard's Advisory Committee on Shareholder Responsibility (which is responsible for advising the Harvard Corporation on how to vote shares held by its endowment).
- 2. I received a Ph.D. in economics from the Massachusetts Institute of Technology with fields in econometrics and finance and a J.D. from Harvard Law School. My Ph.D. concerned the effects of capital market regulation. I also have a B.A. and M.A. from Brown University. After law school, I clerked for Judge Silberman on the U.S. Court of Appeals for the District of Columbia and for Justice Kennedy of the Supreme Court of the United States.
- 3. I have testified before the U.S. Senate Subcommittee on Securities, Insurance and Investment and presented to, among others, the Securities and Exchange Commission, the World Bank, and the National Bureau of Economic Research. I have published articles in leading journals and have written widely in the areas of securities regulation, capital market regulation and corporate governance. I have also served as an expert witness on issues in the mergers and acquisitions area and on securities regulation matters. My academic work and prior testimony are summarized on my curriculum vitae, which is attached hereto as Exhibit 1.

II. Scope and Summary of Conclusions

- 4. I was retained by counsel for JPMorgan Chase Bank ("JPMC") in the above-captioned litigation to address whether the combination of the following two circumstances are unique or unusual: (i) an automatic exchange of securities not conditioned on an exchange of certificates, and (ii) treating a certificate that initially represented one security as representing for all purposes the security provided as a result of an automatic exchange. This assessment was done against the backdrop of the role played by the Depository Trust Corporation ("DTC") as a registered holder of global certificates and the conditional exchange mechanism governing the exchange of the Trust Preferred Securities¹ ("TRUPS") for preferred stock in Washington Mutual, Inc. ("WMI") at issue in this litigation.
- 5. I have reached the following principal conclusions:
 - a. Both automatic exchanges of securities and deeming a preexisting certificate as representing for all purposes the security provided as a result of an automatic exchange are routine occurrences in a wide variety of capital market and corporate transactions.
 - b. The conditional exchange mechanism specified in the trust agreements applicable to the TRUPS (and reflected in the offering circulars, the exchange agreements and on the face of the TRUPS certificates) is similar to automatic exchange mechanisms found in variety of capital market and corporate transactions, including the occurrence of an automatic exchange irrespective of whether there has been a surrender of old certificates or the issuance of new certificates.
 - c. The role of DTC as a registered holder of global certificates is consistent with the occurrence of an automatic exchange not conditioned on an actual exchange of certificates. The fact that the settlement and clearance process occurs after the automatic exchange and requires some amount of time is likewise consistent with the occurrence of an automatic exchange.

_

¹ I understand that the parties to this dispute have been referring to the securities at issue here as "trust preferred securities," and so for consistency this report uses that same terminology.

- 6. I have received assistance from staff at Cornerstone Research, an economics consulting firm. I am being compensated at a rate of \$850 per hour for my work on this matter. In addition, I receive a percentage of the professional fees of the Cornerstone Research staff that work under my supervision. Payment for my work on this matter is in no way contingent on the opinions I express or the outcome of this matter. I have relied upon various materials which are listed in Exhibit 2
- 7. My work in this matter is ongoing. I therefore reserve the right to supplement or modify my opinions, particularly after I have the benefit of reviewing any analysis presented by opposing experts or receiving additional information related to the subject matter of my engagement. If this matter proceeds to trial, selected pages of the documents and information that I relied on may be used as exhibits. I may also prepare graphical or illustrative exhibits based on the contents of this Report, the documents and information that I relied on, and my analysis of those documents and information. I further may be called upon to provide additional summaries of evidence.

III. Analysis

A. Three contractually defined features of the conditional exchange

8. WMI is a holding company that owned Washington Mutual Bank ("WMB"). Beginning in 2006, WMI raised Tier I capital for WMB through five series of Real Estate Investment Trust preferred securities (also "Trust Preferred Securities" or "TRUPS") issued by four WMI affiliated Delaware trusts and a WMI affiliated Cayman Islands limited corporation (collectively the "Issuing Trusts"). These five series of TRUPS were represented prior to the conditional exchange by nine global certificates held by the Depository Trust Corporation. Wilmington Trust Company served as a registrar and trustee. My understanding is

that at no point were there any other certificates representing the TRUPS held by DTC or any other party.

- 9. The governing trust agreements for these TRUPS offerings were substantially similar, each of which detailed that: (1) there would be an "automatic exchange" of the TRUPS for WMI preferred stock (the latter being called "Depositary Shares" in the trust agreements) upon the occurrence of an "exchange event"; (2) consistent with the usage of the "automatic exchange" language they further explicitly provided that the "automatic exchange" would occur without the approval or any action on the part of the TRUPS holders themselves (or approval or action by other parties, including WMI and the Issuing Trusts); and (3) unless, and until, certificates representing the WMI preferred stock are delivered, the "certificates previously representing the TRUPS will be deemed for all purposes to represent" WMI preferred stock.² Not only were these features of the exchange detailed in the governing trust agreements, but they were further reflected, among other places, in (i) the offering circulars associated with the five TRUPS offerings; (ii) the Exchange Agreements entered into by the Issuing Trusts, Mellon Investor Services LLC and WMI (agreements in turn referenced in the trust agreements); and (iii) on the face of the TRUPS certificates themselves. Appendix A excerpts the relevant language establishing these three features from the trust agreements as well as the offering circulars, the Exchange Agreements and the TRUPS certificates themselves.
- 10. Indeed, when the Office of Thrift Supervision declared the occurrence of an "exchange event" on September 25, 2008 WMI then issued a press release disclosing, among other things, that the TRUPS would be "exchanged automatically" for WMI preferred stock and, moreover, that unless (and until) the certificates representing the WMI preferred stock were delivered, the global

² See, for example, Amended and Restated Trust Agreement of Washington Mutual Preferred Funding Trust III, dated May 24, 2007, p. 24.

certificates representing the TRUPS would "be deemed for all purposes" to represent WMI preferred stock.³

11. As I will now discuss, these three features of the exchange are in fact a routine feature of many exchanges in a wide variety of capital market and corporate transactions, a fact that is not surprising given the economics that surround and inform the structure of such exchanges.

B. Examples of similar exchange mechanisms

1. Stock-for-Stock Mergers

- 12. Stock-for-stock mergers are frequent transactions that feature an automatic exchange of one security for another (often an exchange of the stock of the acquired company for the stock of the acquirer, stock of the newly formed corporation, or the right to receive such stock). Section 251(b) of the Delaware General Corporation Law states that the merger agreement should specify "the manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation . ." Given this statutory language, parties to a merger are empowered under Delaware corporate law to choose to have a security exchange occur automatically pursuant to the terms of the merger agreement.
- 13. And, in fact, many parties in stock-for-stock mergers elect in the merger agreement to have the exchange occur automatically. An example of such a provision can be found in the merger agreement between First Valley and New England Bancshares, Inc., which states:

⁴ See also Section 252(b) of the Delaware General Corporation Law ("the manner, if any, of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation . .")

³ "Washington Mutual, Inc. Announces Conditional Exchange of Preferred Securities," *Business Wire*, September 26, 2008. The language concerning the "automatic exchange" and the pre-existing TRUPS global certificates representing for all purposes the WMI preferred stock is also reflected in WMI's subsequent bankruptcy operating reports. (October, 2008, p.6; January 2010, p.8; April 2010, p.8).

At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each share of First Valley Bancorp Common Stock issued and outstanding immediately prior to the Effective Time, other than any dissenting Shares and Excluded Shares (as defined in Section 2.12 of this Agreement), shall, subject to the conditions hereinafter stated, be converted into and represent the right to receive (i) 0.8907 shares (the "Exchange Ratio") of New England Bancshares Common Stock (the "Stock Consideration") and (ii) an aggregate amount of \$9.00 in cash without interest (the "Cash Consideration"), together with the Stock Consideration, the "Per Share Merger Consideration")[.]⁵

- 14. Furthermore, the New England Bancshares merger agreement provides not only for automatic conversion of the securities but that the old certificates representing shares of First Valley Bancorp Common Stock will represent the right to shares of the new firm that will be provided as a result of the automatic exchange.⁶
- 15. Additional examples of stock-for-stock mergers which feature both (i) an automatic exchange of securities not conditioned on an exchange of certificates and (ii) treatment of a certificate that initially represented one security as representing for all purposes the security provided as a result of an automatic exchange can be found in Appendix B to this report.
- 16. The economic rationale for having an automatic exchange is straightforward: by virtue of an automatic exchange merging parties can be ensured that the stock of an acquired company is seamlessly replaced by the acquirer's stock, the stock of the newly formed corporation, or the right thereto, rather than have the exchange occur contingent on a stock certificate exchange process the timing of which might vary depending on the circumstances of the various shareholders. Cancelation of the old security (and the cessation of trading therein) can occur at a single point in time. Further, a date certain can be important in structuring an acquisition of a company, because relative valuations

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⁵ New England Bancshares, Inc. Form 424B3, filed on May 18, 2007, p. A-5.

⁶ New England Bancshares, Inc. Form 424B3, filed on May 18, 2007, p. 37.

of target and acquirer stocks can change over time, and the parties may not want to fix the share exchange ratio for an indefinite or indeterminate period of time.

2. Section 251(g) mergers

17. Delaware law not only allows parties to choose in their merger agreements whether to employ automatic conversion, it also specifically provides for streamlined treatment of certificates—that the certificates of the former corporation be deemed to represent the certificates of the new corporation—in one class of mergers, those falling under the requirements of section 251(g). Section 251(g) of the Delaware General Corporation Law, which governs mergers that convert an operational company into a holding company, provides:

[T]he shares of capital stock of the holding company into which the shares of capital stock of the constituent corporation are converted in the merger shall be represented by the stock certificates that previously represented shares of capital stock of the constituent corporation.⁷

- 18. As a result, in a Section 251(g) merger "no new stock certificates need be issued."⁸
- 19. For example, the merger agreement relating to the section 251(g) merger of Rent-A-Center East, Inc. states:

By operation of the Merger, all of RAC East's capital stock, issued and outstanding or held in treasury, was converted, on a share for share basis, into capital stock of RAC. As a result, each stockholder of RAC East became the owner of an identical number of shares of capital stock of RAC and received securities of the same class....

...

The conversion of shares of capital stock in the Merger occurred without an exchange of stock certificates.

⁷ Delaware General Corporation Law, Chapter 1, Subchapter IX, § 251(g).

⁸ Drexler, David A., Lewis S. Black, Jr., and A. Gilchrist Sparks III, "Delaware Corporate Law and Practice," Matthew Bender and Company Inc, 2009.

Accordingly, certificates formerly representing shares of outstanding capital stock of RAC East are deemed to represent the same number of shares of capital stock of RAC.⁹

20. Additional examples of section 251(g) mergers, with both automatic conversion and pre-existing certificates representing the new security, are provided in Appendix C.

3. Short-form Mergers

- 21. Another type of merger where automatic conversion is frequently found is short-form mergers, where the acquirer already has a controlling stake in the target and can therefore cause in certain circumstances acquisition without a shareholder vote.
- 22. An example of a short-term merger is the acquisition of Obsidian Enterprises, Inc by Black Rock Acquisition Corporation. The merger agreement provides that:

As of the Effective Time, by virtue of the Merger and by operation of law, each of the issued and outstanding shares of common stock of Parent shall be converted into one (1) share of common stock of Subsidiary.

. . .

Surrender of Certificates for Converted or Canceled Shares. Following the Effective Time, the Surviving Corporation shall issue certificates for its common shares upon surrender of the Parent stock certificates for the shares that are to be converted in the Merger. Until so surrendered, certificates of Parent shall be deemed to represent the ownership, for all purposes, of an equivalent number of shares of common stock of the Surviving Corporation.¹⁰

⁹ Rent-A-Center East, Inc. Form 8-K, filed on December 31, 2002, p. 2.

¹⁰ Obsidian Enterprises, Inc. Amendment No. 4 to Schedule 13E-3, filed on January 31, 2006, Transaction Statement Supplement dated January 30, 2006, p. B-2.

23. Here again, there are the twin features of both automatic conversion of securities and the streamlined treatment of certificates. Additional examples of short-form mergers can be found in Appendix D.

4. Reincorporation

- 24. Automatic exchange of securities is also routinely used in agreements for reincorporation, which involves the creation of a subsidiary in a new state into which the parent corporation is later merged. The streamlined handling of certificates is routine in this context.
- 25. For example, in a reorganization involving ThermoEnergy Corporation, the public filing explained:

Upon the Effective Date of the [reincorporation] Merger, each share of TMEN Arkansas Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be automatically converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation.¹¹

26. The filing further stated:

After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of TMEN Arkansas Common Stock may, at such stockholder's option, surrender the same for cancellation to Registrar and Transfer Company, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefore a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as provided herein. Unless and until so surrendered, each outstanding certificate theretofore representing shares of TMEN Arkansas Common Stock, par value \$0.001 per share, shall be deemed for all purposes

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¹¹ Thermoenergy Corp. Form DEF 14A, filed on May 18, 2007, p. B-3.

to represent the number of shares of the Surviving Corporation's Common Stock, par value \$0.001 per share, into which such shares of TMEN Arkansas common stock were converted in the Merger. 12

27. Additional examples of these types of agreements are provided in Appendix E.

5. **Share Consolidation**

- 28. Another context in which automatic exchanges occur outside the merger and acquisitions context is share consolidations, also known as reverse stock splits, in which the firm's outstanding shares are converted into a smaller number of new shares. These actions are typically made unconditional upon the exchange of share certificates.
- 29. For example, a Form 8-K filed by NextPhase Wireless, Inc. describes the consolidation process as follows:

In connection with the Reverse Split there is no requirement that shareholders obtain new or replacement stock certificates. The presently issued certificates shall be deemed for all purposes to represent the number of post-split shares that result from the Reverse Split. Each shareholder of record of shares of the Registrant's Common Stock outstanding immediately prior to the Reverse Split may, but shall not be required to, contact the Registrant's Transfer Agent to exchange the certificates originally representing such shareholder's shares of pre-split Common Stock for new certificates representing the number of whole shares of post-split Common Stock into which the shares have been converted. 13

30. As with the TRUPS certificates, the old certificates are deemed to represent post-split shares without any action on the part of the shareholders. Appendix F provides additional examples of share consolidations.

¹³ NextPhase Wireless, Inc. Form 8-K, filed on October 22, 2007, p. 2.

6. Exchange of Preferred Stock upon Initial Public Offering

- 31. The conversion of preferred stock into common stock upon a firm's initial public offering is another frequent example of an exchange that features both (i) an automatic exchange of securities not conditioned on an exchange of certificates and (ii) deeming a certificate that initially represented one security as representing for all purposes the security that is obtained by virtue of the exchange.¹⁴
- 32. An example of such an exchange is described in the Amended and Restated Certificate of Incorporation of Website Pros, Inc., which filed for initial public offering in 2007:

Automatic Conversion of Series Preferred Stock. Each share of Series Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price. ... Effective as of the time of any such automatic conversion, each certificate or certificates representing such automatically converted shares of Series Preferred Stock shall be deemed to represent the shares of Common Stock into which such shares of Series Preferred Stock automatically converted.¹⁵

33. Exchanges of preferred stock into common are also found in other contexts, for example, upon a specified date or by shareholder vote. Additional examples involving the exchange of preferred for common can be found in Appendix G.

7. Mandatory Convertible Debt Securities

34. Mandatory conversion of convertible debt instruments is also often automatic. Such debt instruments typically convert into stock upon a date certain

¹⁴ Indeed, there are academic papers discussing the economic function served by having conversion be automatic in these circumstances. See, e.g., Gompers, Paul A., "Ownership and Control in Entrepreneurial Firms: An Examination of Convertible Securities in Venture Capital Investments," September 1997; Schmidt, Klaus M., "Convertible Securities and Venture Capital Finance," *Journal of Finance*, Vol. 58, No. 3, June 2003.

¹⁵ Web.com Group, Inc. EX-3.1 to Form S-1, filed on April 27, 2005, p. 7.

or the occurrence of a specified event. The debt agreements routinely contain language specifying automatic conversion not conditioned on an exchange of certificates.

35. For example, the Subscription Agreement for Performance Health Technologies, Inc. equity units (that included convertible notes) provides:

If this Note is outstanding in whole or in part on the Mandatory Conversion Date it shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock. . . . ¹⁶

36. Appendix H provides additional examples of language from convertible debt securities.

C. The DTC's record-keeping role.

- 37. In the context of an automatic exchange not conditioned on an actual exchange of certificates, it is not surprising for the certificates to be held by the Depository Trust Company. Whether or not DTC undertakes certain actions in its role as holder of certificates speaks to the settlement and clearance process not whether an automatic exchange occurred. To have an automatic exchange turn on DTC's subsequent actions would be to undermine the value of specifying in the first place a date certain or a specific event as the trigger for the exchange.
- 38. The DTC system was created to eliminate the problems caused by requiring for settlement and clearance an actual exchange of certificates. The DTC system avoids these problems by immobilizing certificates. Under this system, the DTC (or its nominee) is the record holder of the securities registered on the books of the issuing company as evidenced by global certificates filed with the DTC.

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¹⁶ Performance Health Technologies, Inc. EX-10.99 Subscription Agreement to Form 10SB12G/A, filed on September 27, 2007, p. 28.

- 39. More specifically, the DTC Guide to Deposits specifically contemplates that corporate actions resulting in involuntary exchanges will go through a settlement and clearance process that will not be instantaneous but rather will occur after the exchange takes place and take some additional amount of time. The DTC Guide to Deposits explains that the DTC provides for active monitoring of reorganization activity and will move deposited securities automatically into what it refers to as the "Mandatory Reorganization Prep Box" if it finds a non-elective corporate action in its database of corporate announcements. Mandatory reorganizations include reverse splits, mergers and "other non-elective corporate actions that require the exchange of securities." 17
- 40. Significantly, the DTC specifically recognizes that Mandatory Reorganization Deposits are often made long after the effective date of the reorganization. Thus, the Guide specifies:

For up to three years after the original effective date of a stock-for-stock exchange, a participant that deposits securities at DTC has the option to receive a position reflecting the new stock entitlement on the day after the deposit. If the effective date is more than 3 years past, or the entitlement is for cash or a combination of stock or cash, you will be credited with stock or cash only after DTC receives all of the new entitlements from the exchange agent. Sometimes, however, DTC cannot track down the exchange agent for items received several years after an effective date. These items will be rejected back to you.¹⁸

- 41. In short, there is no assurance that the settlement and clearance process will be completed for all parties immediately after the mandatory reorganization, such as a merger or automatic conversion.
- 42. Registrars (such as trustees and transfer agents) can also play a role in the administrative aspects surrounding the holding of securities. Registrars can keep records of security holders in a register, which in turn can serve various

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¹⁷ DTC Guide to Deposits, "Mandatory Reorganizations."

¹⁸ See DTC Guide to Deposits, pp. 24-5.

administrative functions including sending information to holders, such as annual reports, notices of meetings and events, and proxies; and to disburse funds.¹⁹

IV. Conclusion

43. Automatic exchanges of securities and deeming a pre-existing certificate as representing for all purposes the security provided as a result of an automatic exchange are routine occurrences in a wide variety of capital market and corporate transactions. The conditional exchange mechanism specified in the TRUPS offering documents is similar to automatic exchange mechanisms found in variety of capital market and corporate transactions, including the occurrence of an automatic exchange irrespective of whether there has been a surrender of old certificates or the issuance of new certificates. Further, the role of DTC as a registered holder of global certificates is consistent with the occurrence of an automatic exchange not conditioned on an actual exchange of certificates. The fact that the settlement and clearance process occurs after the automatic exchange and requires some amount of time is likewise consistent with the occurrence of an automatic exchange.

November 14, 2010

¹⁹ See, e.g., Marcel Kahan and Edward Rock, "The Hanging Chads of Corporate Voting," 96 Geo. L. J. 1227 (2008).

Exhibit 1

Allen Ferrell

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CURRENT POSITIONS

Greenfield Professor of Securities Law, Harvard Law School

Member, American Law Institute Project on the Application of U.S. Financial Regulations to Foreign Firms and Cross-Border Transactions

Member, ABA Task Force on Corporate Governance

Fellow, Columbia University's Program on the Law and Economics of Capital Markets

Faculty Associate, Kennedy School of Government

Research Associate, European Corporate Governance Institute

EDUCATION

Massachusetts Institute of Technology, Ph.D. in Economics, 2005 Fields in econometrics and finance

Harvard Law School, J.D., 1995, Magna Cum Laude

- Recipient of the *Sears Prize* (award given to the two students with the highest grades)
- Editor, Harvard Law Review

Brown University, B.A. and M.A., 1992, Magna Cum Laude

PREVIOUS POSITIONS

Harvard University Fellow Harvard Law School, 1997

Law Clerk, Justice Anthony M. Kennedy Supreme Court of the United States; 1996 Term

Law Clerk, Honorable Laurence H. Silberman United States Court of Appeals for the District of Columbia; 1995 Term

COURSES TAUGHT

Securities Regulation Regulation of Market Structure Law and Finance Law and Corporate Finance Contracts

REFEREE FOR FOLLOWING JOURNALS

American Law and Economics Review Journal of Corporation Finance Journal of Law, Economics and Organization Journal of Legal Studies

TALKS

Third Annual Structured Products Association Meeting, "Current Policy Issues Concerning Structured Products"

Annual Boston Analysts Society Meeting, "The Regulation of Structured Products"

Chairperson, Asian Exchange Conference, Singapore, "Issues Facing Asian Exchanges"

U.S. Senate Subcommittee on Securities, Insurance and Investment, "The Regulation of Cross-border Exchange Mergers"

Joint NASD/SEC Forum, "Law and Economics of Best Execution"

SEC Panel, "Econometrics of Measuring the Effects of Mandatory Disclosure"

American Enterprise Institute/Brookings Institution, "Shareholder Rights"

Brookings Institution, "Financial Innovation"

International Development Law Institute, "Corporate Law and Development"

World Bank, "Financial Market Development Indicators"

Shenzhen Stock Exchange, "Regulation of Insider Trading"

Numerous presentations at the National Bureau of Economic Research

PAPERS

- "Thirty Years of Corporate Governance: Firm Valuation and Stock Returns," with Martijn Cremers, Yale ICF Working Paper No. 09-09, revise and resubmit at Journal of Finance
- "Securities Litigation and the Housing Market Downturn," with Atanu Saha, 35 *Journal of Corporation Law* 97 (2009)
- "Legal and Economic Issues in Litigation arising from the 2007-2008 Credit Crisis," with Jennifer Bethel and Gang Hu, in PRUDENT LENDING RESTORED: SECURITIZATION AFTER THE MORTGAGE MELTDOWN (Richard Hering, Robert E. Litan and Yasuyuki Fuchita, Brookings Institution Press 2009)
- "The Supreme Court's 2005-2008 Securities Law Trio: Dura Pharmaceuticals, Tellabs, and Stoneridge," 9 Engage 32 (2009)
- "What Matters in Corporate Governance?" with Lucian Bebchuk & Alma Cohen, 22 Review of Financial Studies 783 (2009)
- "Do Exchanges, CCPs, and CSDs have Market Power?," *forthcoming* in GOVERNANCE OF FINANCIAL MARKET INFRASTRUCTURE INSTITUTIONS (editor Ruben Lee) (2009)
- "An Asymmetric Payoff-Based Explanation of IPO 'Underpricing'," Working Paper, with Atanu Saha
- "The Law and Finance of Broker-Dealer Mark-Ups," commissioned study for NASD using proprietary database (2008)
- "Majority Voting" in Report of the Committee on Capital Markets Regulation (2008)
- "The Loss Causation Requirement for Rule 10B-5 Causes of Action: The Implications of *Dura Pharmaceuticals v. Broudo*," 63 BUSINESS LAWYER 163 (2007)
- "Mandated Disclosure and Stock Returns: Evidence from the Over-the-Counter Market," 36 *Journal of Legal Studies* 1 (June, 2007)
- "Policy Issues Raised by Structured Products," with Jennifer Bethel, in BROOKINGS NOMURA PAPERS IN FINANCIAL SERVICES, Brookings Institution Press, 2007
- "The Case for Mandatory Disclosure in Securities Regulation around the World," 2 Brooklyn Journal of Business Law 81 (2007)
- "U.S. Securities Regulation in a World of Global Exchanges," with Reena Aggarwal and Jonathan Katz, in EXCHANGES: CHALLENGES AND IMPLICATIONS, Euromoney (2007)

- "Shareholder Rights" in REPORT OF THE COMMITTEE ON CAPITAL MARKETS REGULATION (2007)
- "Creditor Rights: A U.S. Perspective," 22 Angler- und Glaubigerschutz bei Handelsgesellschaften 49 (2006)
- "Measuring the Effects of Mandated Disclosure," 1 Berkeley Business Law Journal 369 (2004)
- "If We Understand the Mechanisms, Why Don't We Understand the Output?", 37 *Journal of Corporation Law* 503 (2003)
- "Why European Takeover Law Matters," in Reforming Company and Takeover Law In Europe (Oxford University Press) (2003)
- "Does the Evidence Favor State Competition in Corporate Law?", with Alma Cohen & Lucian Bebchuk, 90 *California L. Rev.* 1775 (2002)
- "Corporate Charitable Giving," with Victor Brudney, 69 *Univ. Of Chicago Law Review* 1191 (2002)
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- "Much Ado About Order Flow," Regulation Magazine (Spring 2002)
- "On Takeover Law and Regulatory Competition," with Lucian Bebchuk, 57 Business Lawyer 1047 (2002)
- "Federal Intervention to Enhance Shareholder Choice," with Lucian Bebchuk, 87 *Virginia Law Review* 993 (2001)
- "A New Approach to Regulatory Competition in Takeover Law," with Lucian Bebchuk, 87 Virginia Law Review 111 (2001)
- "A Proposal for Solving the 'Payment for Order Flow' Problem," 74 Southern California Law Review 1027 (2001)
- "Federalism and Takeover Law: The Race to Protect Managers from Takeovers," with Lucian Bebchuk, 99 *Columbia L. Rev.* 1168 (1999)

EXPERT REPORTS INVOLVING DEPOSITION/WITNESS TESTIMONY

SEC v. John Kelly, Civil Action No. 4612; Expert Report and deposition on May 17, 2010

Expert report and deposition on January 15, 2010 involving mutual bond fund

In re Ticketmaster Entertainment Shareholder Litigation, Lead Case No. BC407677, Expert Report and deposition on December 3, 2009

In re Boston Scientific, Civil Action No. 1:05-CV-11934, Expert Report and deposition on October 13, 2009

In re Emulex Shareholder Litigation, Civil Action No. 4519-VCS: Expert Report and deposition on June 30, 2009

Selectica v. Trilogy, Civil Action No. 4241-VCN: Trial testimony on April 30, 2009

Selectica v. Trilogy, Civil Action No. 4241-VCN: Expert Report and deposition on February 25, 2009

In re Centerline Holding Company Securities Litigation, Civil Action No. 08-CV-00505: Expert Report and deposition on December 4, 2008

Ehrlich, Schlichtmann, v. Kerry et al., Civil Action No. 06-1403-BLS: Expert Report and deposition on November 7, 2008

In Re Mutual Funds Investment Litigation: Parthasarathy v. RS Investment Management, L.P., Civil Action No. 04-CV-3798-JFM: Expert Report and deposition on June 24, 2008

UnitedGlobalCom Shareholders Litigation, Civil Action No. 1012-N: Expert Report and deposition on November 15, 2007

Ryan, and All Others Similarly Situated v. Flowserve Corporation, Civil Action No. 3:03-CV-1769-M: Expert Report and deposition on June 14, 2007

Lamkin v. UBS PaineWebber, Inc. and UBS Warburg, LLC, Civil Action No. H-02-0851: Expert Report and deposition on October 24, 2006

Exhibit 2

Documents Relied Upon by Allen Ferrell, Ph.D.

Document Title, Bates Numbers	Document Date
Legal Pleadings	
Complaint for Declaratory and Other Relief	July 6, 2010
Answer of JPMorgan Chase Bank, National Association	September 14, 2010
Answer and Counterclaim of Debtor and Defendant Washington Mutual, Inc.	September 14, 2010
Motion of Defendant JPMorgan Chase Bank, N.A. for Partial Summary Judgment	November 2, 2010
Memorandum of Points and Authorities in Support of Defendant JPMorgan Chase Bank, N.A.'s Motion for Partial Summary Judgment	November 2, 2010
Declaration of Brent J. McIntosh in Support of Defendant JPMorgan Chase Bank, N.A.'s Motion for Partial Summary Judgment	November 2, 2010
[Proposed] Order Granting Motion of Defendant JPMorgan Chase Bank, N.A. for Partial Summary Judgment	
Motion of Defendant Washington Mutual, Inc. for Summary Judgment	November 2, 2010
Defendant Washington Mutual, Inc.'s Motion to Exceed Page Limitation Imposed by Local Rule 7007-2(a)(iv) in Connection with Opening Brief of Washington Mutual, Inc. in Support of Motion for Summary Judgment	November 2, 2010
Opening Brief of Washington Mutual, Inc. in Support of Motion for Summary Judgment	November 2, 2010
Trust Offering Documents	
Offering Circular for \$1,250,000,000 Washington Mutual Preferred Funding Trust I	February 24, 2006
Offering Circular for \$750,000,000 Washington Mutual Preferred Funding (Cayman) I Ltd.	February 24, 2006
Trust Securities Certificate No. 001 for Washington Mutual Preferred Funding Trust I	March 7, 2006
Trust Securities Certificate No. 002 for Washington Mutual Preferred Funding Trust I	March 7, 2006
Trust Securities Certificate No. 003 for Washington Mutual Preferred Funding Trust I	March 7, 2006
Certificate No. 001 representing Series A-1 Washington Mutual Preferred Funding (Caymen) I Ltd. Preferred Securities	March 7, 2006
Certificate No. 001 representing Series A-2 Washington Mutual Preferred Funding (Caymen) I Ltd. Preferred Securities	March 7, 2006
Amended and Restated Trust Agreement of Washington Mutual Preferred Funding Trust I	March 7, 2006
Restated Memorandum and Articles of Association of Washington Mutual Preferred Funding (Caymen) I Ltd.	March 7, 2006
Exchange Agreement among Washington Mutual Preferred Funding (Cayman) I Ltd., Washington Mutual Preferred Funding Trust I, Washington Mutual, Inc., and Mellon Investor Services LLC	March 7, 2006
Notice of March 7, 2006, Adoption of Resolution Approving and Adopting the Attached Restated Memorandum and Articles of Association of Washington Mutual Preferred Funding (Cayman) I Ltd.	March 8, 2006
Offering Circular for \$500,000,000 Washington Mutual Preferred Funding Trust II	December 6, 2006
Trust Securities Certificate No. 001 for Washington Mutual Preferred Funding Trust II	December 13, 2006
Amended and Restated Trust Agreement of Washington Mutual Preferred Funding Trust II	December 13, 2006
Exchange Agreement among Washington Mutual Preferred Funding Trust II, Washington Mutual, Inc., and Mellon Investor Services LLC	December 13, 2006

Document Title, Bates Numbers	Document Date
Offering Circular for \$500,000,000 Washington Mutual Preferred Funding Trust III	May 21, 2007
Trust Securities Certificate No. 001 for Washington Mutual Preferred Funding Trust III	May 24, 2007
Amended and Restated Trust Agreement of Washington Mutual Preferred Funding Trust III	May 24, 2007
Exchange Agreement among Washington Mutual Preferred Funding Trust III, Washington Mutual, Inc., and Mellon Investor Services LLC	May 24, 2007
Offering Circular for \$1,000,000,000 Washington Mutual Preferred Funding Trust IV	October 18, 2007
Trust Securities Certificate No. 001 for Washington Mutual Preferred Funding Trust IV	October 25, 2007
Trust Securities Certificate No. 002 for Washington Mutual Preferred Funding Trust IV	October 25, 2007
Amended and Restated Trust Agreement of Washington Mutual Preferred Funding Trust IV	October 25, 2007
Exchange Agreement among Washington Mutual Preferred Funding Trust IV, Washington Mutual, Inc., and Mellon Investor Services LLC	October 25, 2007
Examples of Other Securities Exchange Transactions	
PC Connection Inc. Form 8-K filed 1/3/00	January 3, 2000
Airborne, Inc. Form 8-K 12G3 filed 12/26/00	December 26, 2000
Pegasus Satellite Communications, Inc. Form 10-K405 filed 4/2/01	April 2, 2001
Roadway Corporation Form 8-A12G filed 5/30/01	May 30, 2001
Environmental Energy Services, Inc. Form 8-K filed 7/6/01	July 6, 2001
Motor Cargo Industries, Inc. Form SC 13E3/A filed 1/24/02, Schedule 13E-3 Amendment No. 3	January 24, 2002
Motor Cargo Industries Inc. Form SC-13E3/A filed 2/14/02	February 14, 2002
Axion International Holdings Form 8-K filed 3/22/02, Exhibit 4.2, Form of Senior Secured Convertible Promissory Note due April, 2005	March 22, 2002
Indenix Pharmaceuticals Inc., Form S-1 filed 4/12/02, Exhibit 3.1, Memorandum and Articles of Association	April 12, 2002
Avis Budget Group, Inc., Form 424B3 filed 5/30/02	May 30, 2002
Avis Budget Group, Inc. Form S-8 filed 6/3/02	June 3, 2002
Glowpoint Inc. Form 8-K filed 12/23/02, Exhibit 4.1, Subordinated Convertible Promissory Note	December 23, 2002
Rent-A-Center, Inc. Form 8-K filed 12/31/02	December 31, 2002
Satcon Technology Corp Form 8-K filed 2/19/03, Exhibit 10.7, Secured Convertible Promissory Note Due 2006	February 19, 2003
First Virginia Banks, Inc. Form DEF 14A filed 5/14/03	May 14, 2003
Environmental Power Corp., Form 8-K filed 6/2/03, Exhibit 2, Agreement and Plan of Merger	June 2, 2003
Environmental Power Corporation Form S-8 filed 6/10/03	June 10, 2003
BB&T Corporation Form 8-K filed 7/2/03	July 2, 2003
Cano Petroleum Inc., Form 10SB12G filed 9/4/03, Exhibit 10.1, Agreement and Plan of Merger	September 4, 2003
Huron Ventures, Inc. Form 10SB12G filed 9/4/03	September 4, 2003
Satcon Technology Corporation Form 10-K filed 12/23/03	December 23, 2003
BB&T Corporation Form S-4 filed 1/30/04	January 30, 2004
Acadia Pharmaceuticals Inc. Form S-1 filed 2/27/04, Exhibit 3.1, Registrant's Amended and Restated Certificate of Incorporation	February 27, 2004

Document Title, Bates Numbers	Document Date
V-ONE Corporation 10-K filed on 3/26/04, Exhibit 10.99, Subordinated Convertible Promissory Note Due February 27, 2009	March 26, 2004
Color Kinetics Inc. Form S-1 filed 4/9/04, Exhibit 3.1, Sixth Amended and Restated Certificate of Incorporation	April 9, 2004
Central Pacific Financial Corp. Form 8-K filed 4/27/04, Exhibit 99.2, Agreement and Plan of Merger dated April 22, 2004 between Central Pacific Financial Corp. and CB Bancshares, Inc.	April 27, 2004
BB&T Corporation Form 10-Q filed 5/7/04	May 7, 2004
Omega Financial Corp. Form 424B3 filed 8/10/04	August 10, 2004
Acadia Pharmaceuticals Inc. Form 10-Q, filed 8/12/04	August 12, 2004
TBC Corp. Form 8-K123G, filed 11/24/04, Exhibit 2.1, Agreement and Plan of Merger Pursuant to Section 251(g) of the Delaware General Corporation Law	November 24, 2004
Lithium Technology Corporation Form 10-QSB filed 11/24/04	November 24, 2004
Color Kinetics Inc. Form 10-K filed 3/15/05	March 15, 2005
Central Pacific Financial Corp. Form 10-K filed 3/16/05	March 16, 2005
Omega Financial Corporation Form 10-K filed 3/16/05	March 16, 2005
Idenix Pharmaceuticals, Inc. Form 10-K, filed 3/17/05	March 17, 2005
V-ONE Corporation Form NT 10-K filed 3/30/05	March 30, 2005
Glowpoint, Inc. Form 10-K filed 3/31/05	March 31, 2005
Coley Pharmaceutical Group, Inc. Form S-1 filed 4/20/05, Exhibit 3.1, Fourth Amended and Restated Certificate of Incorporation	April 20, 2005
Web.com Group, Inc. Form S-1 filed 4/27/05, F-21, and Exhibit 3.1, Amended and Restated Certificate of Incorporation	April 27, 2005
Lithium Technology Corp. Form 10QSB filed on 6/1/05, Exhibit 10.79, Form of 8% Convertible Notes	June 1, 2005
TBC Corporation Form S-8 POS filed 6/24/05	June 24, 2005
Healthrenu Medical Inc., Form 8-K filed on 9/9/05, Exhibit 10.1, Unsecured Convertible Note	September 9, 2005
Northland Cranberries, Inc., Form SC 13E3/A filed 11/4/05, Amendment No. 2	November 4, 2005
Lithium Technology Corporation Form 10-QSB filed 11/14/05	November 14, 2005
Northland Cranberries Inc. Form SC13E3/A filed 11/28/05, Amendment No. 3	November 28, 2005
Analytical Surveys, Inc. Form 10-KSB filed 12/29/05	December 29, 2005
Precision Aerospace Components, Inc. Form 8-K filed 1/9/06, Exhibit 10.2, Agreement and Plan of Merger	January 9, 2006
Gasel Transportation Lines, Inc. Form 8-K filed 1/9/06	January 9, 2006
Obsidian Enterprises, Inc. Form 13E-3/A filed 1/31/06, Transaction Statement Supplement dated 1/30/06	January 31, 2006
Healthrenu Medical Inc., Form 8-K filed on 2/16/06, Exhibit 10.1, Secured Convertible Note	February 16, 2006
XO Holdings, Inc. Form 8-K filed 3/6/06	March 6, 2006
Website Pros, Inc. Form 10-K, filed 3/8/06	March 8, 2006
Coley Pharmaceutical Group, Inc. Form 10-K, filed 3/23/06	March 23, 2006
Obsidian Enterprises Inc. Form SC13E3/A filed 3/27/06	March 27, 2006
Achillion Pharmaceuticals, Inc. Form S-1 filed 3/31/06, Exhibit 3.1, Amended and Restated Certificate of Incorporation of the Registrant	March 31, 2006

Document Title, Bates Numbers	Document Date
Pharmasset Inc. Form S-1 filed 5/8/06, Exhibit 3.1, Amended and Restated Certificate of Incorporation of the Registrant	May 8, 2006
Auriga Laboratories, Inc. DEF 14A filed on 6/6/06	June 6, 2006
Vubotics, Inc. Form DEF 14A filed 1/3/07	January 3, 2007
Monotype Imaging Holdings, Inc. Form S-1 filed 1/26/07, Exhibit 10.58, Subordinated Convertible Promissory Note of Monotype Holdings, Inc.	January 26, 2007
EnergySouth, Inc. Form 8-K filed 2/1/07	February 1, 2007
Leslie's Poolmart, Inc. Form 10-Q filed 2/9/07, Exhibit 2.1, Agreement and Plan of Merger to Form Holding Company	February 9, 2007
Noninvasive Medical Technologies, Inc. Form SB-2 filed 2/12/07	February 12, 2007
Noninvasive Medical Technologies, Inc. Form SB-2 filed 2/13/07, Exhibit 2.1, Agreement and Plan of Merger of NMT, Inc. (Delaware) and NMT, Inc. (Michigan)	February 13, 2007
First California Financial Group, Inc. Form 424B3 filed 2/21/07	February 21, 2007
Fluid Media Networks, Inc. Form 8-K filed 2/21/07, Exhibit 10.2, Plan and Agreement of Merger	February 21, 2007
Vasogen, Inc. Form 6-K filed 3/1/07, Exhibit 99.1, Notice of 2007 Annual and Special Meeting of Shareholders and Management Proxy Circular	March 1, 2007
Narrowstep, Inc. Form 8-K filed 3/6/07, Exhibit 10.3, 12% Mandatorily Convertible Note	March 6, 2007
First California Financial Group, Inc. Form 8-K filed 3/16/07	March 16, 2007
BB&T Corporation Form 424B3 filed 3/26/07	March 26, 2007
Achillion Pharmaceuticals, Inc. Form 10-K, filed 3/29/07	March 29, 2007
KKR Financial Corp. Form DEF 14A filed 4/2/07	April 2, 2007
Vubotics, Inc. Form 10-KSB filed 4/2/07	April 2, 2007
HKN, Inc. Form DEF 14A filed 4/16/07	April 16, 2007
Health Discovery Corp. Form 8-K filed 4/20/07, Exhibit 99.1, Notice of a Special Meeting of Shareholders to be Held on May 22, 2007	April 20, 2007
VirnetX Holding Corp. Form DEFM 14C filed 5/3/07, Exhibit 10, Agreement and Plan of Merger of PASW Delaware and PASW California	May 3, 2007
BB&T Corporation Form 10-Q filed 5/4/07	May 4, 2007
KKR Financial Holdings LLC Form 8-K filed 5/4/07	May 4, 2007
Leslie's Poolmart, Inc. Form 10-Q filed 5/15/07	May 15, 2007
Vasogen Inc. Form 20-F/A filed 5/17/07	May 17, 2007
New England Bancshares, Inc. Form 424B3 filed 5/18/07	May 18, 2007
ThermoEnergy Corporation Form DEF 14A filed 5/18/07	May 18, 2007
VillageEDOCS, Inc. Form DEF 14A filed 5/21/07	May 21, 2007
Fluid Media Networks, Inc. Form 8-K filed 5/23/07	May 23, 2007
HKN, Inc. Form 8-K filed 6/7/07	June 7, 2007
Ikona Gear International, Inc. Form 8-K filed 6/8/07, Exhibit 99.3, Agreement and Plan of Merger between Ikona-Nevada and Ikona-Delaware	June 8, 2007
Prosperity Bancshares, Inc. Form S-4 filed 6/12/07	June 12, 2007
Pasw, Inc. Form 8-K filed 6/18/07	June 18, 2007

Document Title, Bates Numbers	Document Date
Wits Basin Precious Minerals, Inc. Form 8-K filed on 6/25/07, Exhibit 10.2, Convertible Promissory Note	June 25, 2007
New England Bancshares, Inc. Form 8-K filed 7/18/07	July 18, 2007
Intevac, Inc. Form 8-K filed 7/23/07, Exhibit 2.1, Agreement and Plan of Merger of Intevac Delaware and Intevac California	July 23, 2007
Health Discovery Corporation Form 10-QSB filed 8/16/07	August 16, 2007
Porter Bancorp, Inc. Form S-4 filed 8/24/07	August 24, 2007
A. G. Edwards, Inc. Form DEFM 14A filed 8/30/07	August 30, 2007
Monotype Imaging Holdings Inc. Form 10-Q filed 9/7/07	September 7, 2007
HealthRenu Medical, Inc. Form 8-K filed 9/21/07	September 21, 2007
Glowpoint, Inc. Form 8-K filed 9/24/07, Exhibit 4.3, Glowpoint, Inc. Senior Secured Convertible Promissory Note Due March 31, 2009	September 24, 2007
Performance Health Technologies, Inc. Form 10SB12 G/A filed on 9/27/07, Exhibit 10.99, Subscription Agreement	September 27, 2007
A.G. Edwards, Inc. Form 15-12B filed 10/1/07	October 1, 2007
Trans-Science Corporation Form DEF 14A filed 10/15/07	October 15, 2007
NextPhase Wireless, Inc. Form 8-K filed on 10/22/07	October 22, 2007
Guided Therapeutics Inc. 10QSB filed on 10/23/07, Exhibit 10.2, Amended and Restated Loan Agreement	October 23, 2007
Blue Marble Media Corp. Form DEF 14A filed 10/23/07	October 23, 2007
Nephros Inc. Form Def 14C on 10/24/07, Exhibit D	October 24, 2007
KeyOn Communications Holdings, Inc. Form 8-K filed 10/29/07, Item 3.03, Material Modification to Rights of Security Holders	October 29, 2007
Glencairn Gold Corporation Form 6-K filed 11/5/07	November 5, 2007
Prosperity Bancshares, Inc. Form 10-K filed 11/9/07	November 9, 2007
Porter Bancorp, Inc. Form 10-Q filed 11/13/07	November 13, 2007
KeyOn Communications Holdings, Inc. Form 10-QSB filed 11/14/07	November 14, 2007
Eurasia Energy Limited Form 424B4 filed 11/15/07	November 15, 2007
NextPhase Wireless, Inc. Form 10-QSB filed 11/19/07	November 19, 2007
ThermoEnergy Corporation Form 10-QSB filed 11/20/07	November 20, 2007
Glencairn Gold Corporation Form 6-K filed 11/30/07	November 30, 2007
Eagle Bancorp, Inc. Form 8-K filed 12/3/07, Exhibit 2.1, Agreement and Plan of Merger	December 3, 2007
Gemstar-TV Guide International, Inc. Form 8-K filed 12/7/07, Exhibit 2.1, Agreement and Plan of Merger	December 7, 2007
ROK Entertainment Group, Inc. Form DEF 14C filed 12/10/07, Exhibit 1, Agreement and Plan of Merger	December 10, 2007
Ikona Gear International, Inc. Form 10-KSB filed 12/11/07	December 11, 2007
Forticell BioScience, Inc. Form SB 2/A filed on 12/26/07	December 26, 2007
BGC Partners, Inc. Form PRER 14A filed 12/28/07	December 28, 2007
Pharmasset, Inc. Form 10-K, filed 12/31/07	December 31, 2007

Document Title, Bates Numbers	Document Date
Avanir Pharmaceuticals, Inc. Form DEF 14A filed 1/4/08	January 4, 2008
MiMedx Group, Inc. Form 8-K filed 2/8/08, Exhibit 10.25, Agreement and Plan of Merger by and among SpineMedica Corp. and MiMedx, Inc	February 8, 2008
ntevac, Inc. Form 10-K filed 3/17/08	March 17, 2008
Auriga Laboratories, Inc. Form 10-KSB, filed 3/30/08	March 30, 2008
VillageEDOCS, Inc. Form 10-KSB filed 3/31/08	March 31, 2008
Nephros, Inc. Form 10-KSB filed 3/31/08	March 31, 2008
Wits Basin Precious Minerals Inc. Form 10-KSB filed 4/4/08	April 4, 2008
3GC Partners, Inc. Form 8-K filed 4/7/08	April 7, 2008
Prosperity Bancshares, Inc. Form S-4 filed 4/10/08	April 10, 2008
Nutra Pharma Corp. Form 8-K filed 4/14/08, Exhibit 10.1, Agreement and Plan of Merger	April 14, 2008
China Shuangji Cement Ltd. Form 10-KSB filed 4/15/08	April 15, 2008
Gemstar-TV Guide International, Inc. Schedule 13D/A filed 5/6/08	May 6, 2008
Digitiliti Inc. Form 10-12G filed 5/13/08, Exhibit 10.2, Agreement and Plan of Merger	May 13, 2008
Flo Corp. Form 8-K filed on 5/14/08, Exhibit 4.1, Form of 12% Senior Convertible Note	May 14, 2008
Global Diversified Industries, Inc. Form 8-K filed 5/20/08, Item 3.03, Material Modification to Rights of Security Holders	May 20, 2008
Amazon Goldsands, Ltd. Form 8-K filed 6/9/08, Exhibit 99.1, Amazon Goldsands Ltd. Announces Name Ticker Symbol Change to AZNG	June 9, 2008
Elephant Talk Communications, Inc. Form 8-K filed 6/10/08, Item 3.03, Material Modification to Rights of Security Holders	June 10, 2008
Narrowstep Inc. Form 10-KSB filed 6/16/08	June 16, 2008
ROK Entertainment Group Inc. Form 10-KSB filed 6/30/08	June 30, 2008
Corpus Resources Corporation Form 20-F filed 7/11/08	July 11, 2008
Westport Innovations, Inc. Form F-10 filed 7/22/08	July 22, 2008
Vufusion, Inc. Form S-1 filed 7/31/08, Exhibit 3.1, Restated Certificate of Formation as a For-Profit Corporation	July 31, 2008
Elephant Talk Communications, Inc. Form 10-Q filed 8/14/08	August 14, 2008
Flo Corporation Form 10-Q filed 8/22/08	August 22, 2008
Eagle Bancorp, Inc. Form 8-K filed 9/2/08	September 2, 2008
Global Diversified Industries, Inc. Form 10-Q filed 9/22/08	September 22, 200
Master Silicon Carbide Industries, Inc. Form DEF 14C filed 10/20/08	October 20, 2008
Master Silicon Carbide Industries, Inc. Form 8-K filed 11/12/08	November 12, 200
Forticell BioScience Form 10-Q, filed 11/17/08	November 17, 200
Performance Health Technologies, Inc. Form 10-Q filed 11/19/08	November 19, 200
Middle Kingdom Alliance Corp., Form DEF 14A filed 11/24/2008	November 24, 200
Prosperity Bancshares, Inc. Form 10-Q filed 3/2/09	March 2, 2009
Avanir Pharmaceuticals, Inc. Form 8-K filed 3/25/09	March 25, 2009
Nutra Pharma Corp. Form 10-K filed 4/15/09	April 15, 2009

Document Title, Bates Numbers	Document Date
MiMedx Group, Inc. Form 10-K filed 6/15/09	June 15, 2009
Eurasia Energy Limited Form 20-F filed 6/19/09	June 19, 2009
China Cord Blood Corp., Form POS AM filed 7/7/09, Post-Effective Amendment No. 3	July 7, 2009
Kiska Metals Corp. Form 6-K filed 7/7/09	July 7, 2009
Searchmedia Holdings Ltd., Form S-4/A filed 7/15/09	July 15, 2009
Middle Kingdom Alliance Corp. Form 10-Q filed 8/14/09	August 14, 2009
Silver Falcon Mining, Inc. Form 10-12G filed 8/17/09	August 17, 2009
Copernic, Inc. Form 6-K filed $9/11/09$, Exhibit 99.2, Notice of Special Shareholders' Meeting to be Held on September 11, 2009	September 11, 2009
Copernic Inc. Form 6-K filed 9/15/09	September 15, 2009
ProIndia International Inc. Form 8-K filed 9/17/09	September 17, 2009
Franklin Electronic Publishers, Inc. Form DEFA 14A filed 10/1/09, Exhibit 2.1, Agreement and Plan of Merger	October 1, 2009
American Lorain Corporation Form DEF 14C filed 10/13/09, p. 14, Appendix A, Agreement and Plan of Merger	October 13, 2009
Kiska Metals Corporation Form 6-K filed 10/15/09	October 15, 2009
Franklin Electronic Publishers, Incorporated Form SC 13E-3 filed 11/24/09	November 24, 2009
Aurum, Inc. Form DEF 14C filed 12/21/09	December 21, 2009
Castle Brands Inc. Form DEF 14A filed 12/30/09	December 30, 2009
Aurum, Inc. Form 10-K filed 1/28/10	January 28, 2010
Castle Brands Inc. Form 10-Q filed 2/16/10	February 16, 2010
Guided Therapeutics, Inc. Form 10-K filed 3/23/10	March 23, 2010
American Lorain Corporation Form 10-K filed 3/29/10	March 29, 2010
Glowpoint, Inc. Form 10-K filed 3/31/10	March 31, 2010
China Cord Blood Corp. Form 20-F/A filed 10/20/10	October 20, 2010
SearchMedia Holdings Ltd. Form 10-K filed 11/1/10	November 1, 2010

Data Sources

Westlaw Business

Other Documents

Depository Trust Company Guide to Deposits

Drexler, David A., Lewis S. Black, Jr., and A. Gilchrist Sparks III, "Delaware Corporate Law and Practice," Matthew Bender and Company Inc, 1988

Gompers, Paul A., "Ownership and Control in Entrepreneurial Firms: An Examination of Convertible Securities in Venture Capital Investments," September 1997

Schmidt, Klaus M., "Convertible Securities and Venture Capital Finance," *Journal of Finance*, Vol. 58, No. 3, June 2003

Kahan, Marcel, and Edward Rock, "The Hanging Chads of Corporate Voting," *Georgetown Law Journal*, Vol. 96, 2008

"Washington Mutual, Inc. Announces Conditional Exchange of Preferred Securities," Business Wire

September 26, 2008

Document Title, Bates Numbers	Document Date
Washington Mutual, Inc. Press Release: "Washington Mutual, Inc. (NYSE:WM) Announced Today that an 'Exchange Event' Has Occurred"	September 26, 2008
United States Bankruptcy Court, District of Delaware, in re Washington Mutual, Inc., et al., Monthly Operating Report for Reporting Period September 26, 2008, to October 31, 2008	December 1, 2008
United States Bankruptcy Court, District of Delaware, in re Washington Mutual, Inc., et al., Monthly Operating Report for Reporting Period January 1, 2010, to January 31, 2010	February 25, 2010
United States Bankruptcy Court, District of Delaware, in re Washington Mutual, Inc., et al., Monthly Operating Report for Reporting Period April 1, 2010, to April 30, 2010	May 28, 2010

All other materials cited in the report and appendices

Appendix A

Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
Trust Agreement	Trust I	Article IV: Section 4.08, p. 21	Exchanged automatically	If the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Fixed-to-Floating Rate Depositary Shares (the "Conditional Exchange").
	Trust I	Article IV: Section 4.08, p. 22	Deemed for all purposes to represent	Until replacement certificates representative of Fixed-to-Floating Rate Depositary Shares are delivered or in the event such replacement certificates are not delivered, any certificates previously representing Trust Securities shall be deemed for all purposes to represent Fixed-to-Floating Rate Depositary Shares.
	Trust II	Article IV: Section 4.08, p. 21	Exchanged automatically	If the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares (the "Conditional Exchange").
	Trust II	Article IV: Section 4.08, p. 22	Deemed for all purposes to represent	Until certificates representing the Depositary Shares are delivered or in the event such replacement certificates are not delivered for any reason (including, without limitation, failure by the Holder thereof to surrender such Certificates), any Certificates previously representing Trust Securities shall be deemed for all purposes to represent Depositary Shares.
	Trust III	Article IV: Section 4.08, p. 22	Exchanged automatically	If the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares (the "Conditional Exchange"). Upon the occurrence of a Conditional Exchange
	Trust III	Article IV: Section 4.08, p. 23	Deemed for all purposes to represent	Until certificates representing the Depositary Shares are delivered or in the event such replacement certificates are not delivered for any reason (including, without limitation, failure by the Holder thereof to surrender such Certificates), any Certificates previously representing Trust Securities shall be deemed for all purposes to represent Depositary Shares.
	Trust IV	Article IV: Section 4.08, p. 21	Exchanged automatically	If the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares (the "Conditional Exchange"). Upon the occurrence of a Conditional Exchange

Appendix A

Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
	Trust IV	Article IV: Section 4.08, p. 22	Deemed for all purposes to represent	Until certificates representing the Depositary Shares are delivered or in the event such replacement certificates are not delivered for any reason (including, without limitation, failure by the Holder thereof to surrender such Certificates), any Certificates previously representing Trust Securities shall be deemed for all purposes to represent Depositary Shares.
	Cayman	Section 9(f), p. 15	Exchanged automatically	If the OTS directs upon the occurrence of an Exchange Event, each Preferred Security then outstanding shall be exchanged automatically for a like amount of newly issued WMI Depositary Shares.
	Cayman	Section 9(f), p. 16	Deemed for all purposes to represent	Until replacement certificates representative of WMI Depositary Shares are delivered or in the event such replacement certificates are not delivered, any certificates previously representing Preferred Securities shall be deemed for all purposes to represent WMI Depositary Shares.
Offering Circular	Trust I	Cover Page	Exchanged automatically	If the Office of Thrift Supervision (together with any successor regulator, the "OTS") so directs following the occurrence of an Exchange Event as described herein, each Trust Security will be automatically exchanged for depositary shares representing a like amount of Washington Mutual, Inc.'s ("WMI") Series I Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock.
	Trust I	Conditional Exchange, p. 64	Deemed for all purposes to represent	Until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing Trust Securities will be deemed for all purposes to represent Fixed-to-Floating Rate Depositary Shares. All corporate authorization necessary for WMI to issue the Fixed-to-Floating Rate Depositary Shares and the Fixed-to-Floating Rate WMI Preferred Stock as of the time of exchange will be completed prior to or upon completion of this Offering. Accordingly, once the OTS directs a Conditional Exchange after the occurrence of an Exchange Event, no action will be required to be taken by holders of Trust Securities, by WMI, by WMB (other than to inform the OTS), by the Company or by WaMu Delaware in order to effect the automatic exchange as of the time of exchange. After the occurrence of the Conditional Exchange, the Trust Securities will be owned by WMI.
	Trust I	Conditional Exchange, p. 63	Without further action	As of the time of exchange, all of the Trust Securities will be transferred to WMI without any further action by WaMu Delaware, all rights of the holders of Trust Securities as holders of beneficial interests in WaMu Delaware will cease, and such persons will be, for all purposes, the holders of Fixed-to-Floating Rate Depositary Shares.

Appendix A

Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
	Trust II	Cover Page	Exchanged automatically	If the Office of Thrift Supervision (together with any successor regulator, the "OTS") so directs following the occurrence of an Exchange Event as described herein, each Trust Security will be automatically exchanged for depositary shares representing a like amount of Washington Mutual, Inc.'s ("WMI") Series L Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock.
	Trust II	Conditional Exchange, p. 74	Deemed for all purposes to represent	Until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing Trust Securities will be deemed for all purposes to represent Depositary Shares. All corporate authorization necessary for WMI to issue the Depositary Shares and the Series L WMI Preferred Stock as of the time of exchange will be completed prior to or upon completion of this Offering. Accordingly, once the OTS directs a Conditional Exchange after the occurrence of an Exchange Event, no action will be required to be taken by holders of Trust Securities, by WMI, by WMB (other than to inform the OTS), by the Company or by the Trust in order to effect the automatic exchange as of the time of exchange. After the occurrence of the Conditional Exchange, the Trust Securities will be owned by WMI.
	Trust II	Conditional Exchange, p. 74	Without further action	As of the time of exchange, all of the Trust Securities will be transferred to WMI without any further action by the Trust, all rights of the holders of Trust Securities as holders of beneficial interests in the Trust will cease, and such persons will be, for all purposes, the holders of Depositary Shares.
	Trust III	Cover Page	Exchanged automatically	If the Office of Thrift Supervision (together with any successor regulator, the "OTS") so directs following the occurrence of an Exchange Event as described herein, each Trust Security will be automatically exchanged for depositary shares representing a like amount of Washington Mutual, Inc.'s ("WMI") Series M Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock.

Appendix A

Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
	Trust III	Conditional Exchange, p. 74	Deemed for all purposes to represent	Until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing Trust Securities will be deemed for all purposes to represent Depositary Shares. All corporate authorization necessary for WMI to issue the Depositary Shares and the Series M WMI Preferred Stock as of the time of exchange will be completed prior to or upon completion of this Offering. Accordingly, once the OTS directs a Conditional Exchange after the occurrence of an Exchange Event, no action will be required to be taken by holders of Trust Securities, by WMI, by WMB (other than to inform the OTS), by the Company or by the Trust in order to effect the automatic exchange as of the time of exchange. After the occurrence of the Conditional Exchange, the Trust Securities will be owned by WMI.
	Trust III	Conditional Exchange, p. 74	Without further action	As of the time of exchange, all of the Trust Securities will be transferred to WMI without any further action by the Trust, all rights of the holders of Trust Securities as holders of beneficial interests in the Trust will cease, and such persons will be, for all purposes, the holders of Depositary Shares.
	Trust IV	Cover Page	Exchanged automatically	If the Office of Thrift Supervision (together with any successor regulator, the "OTS") so directs following the occurrence of an Exchange Event as described herein, each Trust Security will be automatically exchanged for depositary shares representing a like amount of Washington Mutual, Inc.'s ("WMI") Series N Perpetual Non-cumulative Fixed-to-Floating Rate Preferred Stock.
	Trust IV	Conditional Exchange, pp. 91–92	Deemed for all purposes to represent	Until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing Trust Securities will be deemed for all purposes to represent Depositary Shares. All corporate authorization necessary for WMI to issue the Depositary Shares and the Series N WMI Preferred Stock as of the time of exchange will be completed prior to or upon 91 completion of this Offering. Accordingly, once the OTS directs a Conditional Exchange after the occurrence of an Exchange Event, no action will be required to be taken by holders of Trust Securities, by WMI, by WMB (other than to inform the OTS), by the Company or by the Trust in order to effect the automatic exchange as of the time of exchange. After the occurrence of the Conditional Exchange, the Trust Securities will be owned by WMI.

Appendix A

Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
	Trust IV	Conditional Exchange, p. 91	Without further action	As of the time of exchange, all of the Trust Securities will be transferred to WMI without any further action by the Trust, all rights of the holders of Trust Securities as holders of beneficial interests in the Trust will cease, and such persons will be, for all purposes, the holders of Depositary Shares.
	Cayman	Cover Page	Exchanged automatically	If the Office of Thrift Supervision (together with any successor regulator, the "OTS") so directs following the occurrence of an Exchange Event as described herein, each WaMu Cayman Preferred Security will be automatically exchanged for depositary shares representing a like amount of Washington Mutual, Inc.'s ("WMI") Series J Perpetual Noncumulative Fixed Rate Preferred Stock.
	Cayman	Conditional Exchange, p. 71	Deemed for all purposes to represent	Until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing WaMu Cayman Preferred Securities will be deemed for all purposes to represent Fixed Rate Depositary Shares. All corporate authorization necessary for WMI to issue the Fixed Rate Depositary Shares and the Fixed Rate WMI Preferred Stock as of the time of exchange will be completed prior to or upon completion of this Offering. Accordingly, once the OTS directs a Conditional Exchange after the occurrence of an Exchange Event, no action will be required to be taken by holders of WaMu Cayman Preferred Securities, by WMI, by WMB (other than to inform the OTS), by the Company, or by WaMu Cayman in order to effect the automatic exchange as of the time of exchange. After the occurrence of the Conditional Exchange, the WaMu Cayman Preferred Securities will be owned by WMI.
	Cayman	Conditional Exchange, p. 71	Without further action	As of the time of exchange, all of the WaMu Cayman Preferred Securities will be transferred to WMI without any further action by WaMu Cayman, all rights of the holders of WaMu Cayman Preferred Securities as WaMu Cayman's shareholders will cease, and such persons will be, for all purposes, the holders of Fixed Rate Depositary Shares.
Exchange Agreement	Trust I	Section 1, p. 2	Exchanged automatically	"Conditional Exchange" means if the OTS so directs upon the occurrence of an Exchange Event, each WaMu Cayman Preferred Security then outstanding shall be automatically exchanged for a like amount of Fixed Rate Depositary Shares, and each Trust Security then outstanding shall be exchanged automatically for a like amount of Fixed-to-Floating Rate Depositary Shares.

Appendix A

Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
	Trust I	Section 2, Section 3, pp. 6 – 7	Deemed for all purposes to represent	Until receipts evidencing Fixed Rate Depositary Shares are delivered or in the event such replacement receipts are not delivered, any certificates previously representing the WaMu Cayman Preferred Securities shall be deemed for all purposes to represent Fixed Rate Depositary Shares. Until receipts evidencing Fixed-to-Floating Rate Depositary Shares are delivered or in the event such replacement receipts are not delivered, any certificates previously representing the Trust Securities shall be deemed for all purposes to represent Fixed-to-Floating Rate Depositary Shares.
	Trust II	Section 1, p. 1	Exchanged automatically	"Conditional Exchange" means if the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a like amount of Series L Depositary Shares.
	Trust II	Section 2, p. 4	Deemed for all purposes to represent	Until receipts evidencing Series L Depositary Shares are delivered or in the event such replacement receipts are not delivered, any certificates previously representing the Trust Securities shall be deemed for all purposes to represent Series L Depositary Shares.
	Trust III	Section 1, p. 1	Exchanged automatically	"Conditional Exchange" means if the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a like amount of Series M Depositary Shares.
	Trust III	Section 2, p. 4	Deemed for all purposes to represent	Until receipts evidencing Series M Depositary Shares are delivered or in the event such replacement receipts are not delivered, any certificates previously representing the Trust Securities shall be deemed for all purposes to represent Series M Depositary Shares.
	Trust IV	Section 1, p. 1	Exchanged automatically	"Conditional Exchange" means if the OTS so directs upon the occurrence of an Exchange Event, each Trust Security then outstanding shall be exchanged automatically for a like amount of Series N Depositary Shares.
	Trust IV	Section 2, p. 4	Deemed for all purposes to represent	Until receipts evidencing Series N Depositary Shares are delivered or in the event such replacement receipts are not delivered, any certificates previously representing the Trust Securities shall be deemed for all purposes to represent Series N Depositary Shares.
TruIPS Certificates	Trust I	No. 001–003	Exchanged automatically	Section 4.08 of the Trust Agreement provides for the procedures pursuant to which each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Fixed-to-Floating Rate Depositary Shares if the OTS so directs upon the occurrence of an Exchange Event.

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Excerpts from Selected Case Documents Related to Automatic Exchange of TRUPS

Document	Trust	Section	Language	Excerpt
	Trust II	No. 001	Exchanged automatically	Section 4.08 of the Trust Agreement provides for the procedures pursuant to which each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares if the OTS so directs upon the occurrence of an Exchange Event.
	Trust III	No. 001	Exchanged automatically	Section 4.08 of the Trust Agreement provides for the procedures pursuant to which each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares if the OTS so directs upon the occurrence of an Exchange Event.
	Trust IV	No. 001–002	Exchanged automatically	Section 4.08 of the Trust Agreement provides for the procedures pursuant to which each Trust Security then outstanding shall be exchanged automatically for a Like Amount of newly issued Depositary Shares if the OTS so directs upon the occurrence of an Exchange Event.
Press Release 9/26/08	Trust I Trust II Trust III Trust IV Cayman		Exchanged automatically	In accordance with the terms of the documents governing the Securities, the Conditional Exchange of the Securities will occur on Friday, September 26,2008 at 8:00 A.M. New York time. As of the time of the Conditional Exchange, each outstanding Security will be exchanged automatically for a like amount of newly issued Fixed Rate Depositary Shares or newly issued Fixed-to-Floating Rate Depositary Shares, as applicable, each representing a 1/1000th interest in one share of the applicable series of preferred stock of WMI.
	Trust I Trust II Trust III Trust IV Cayman		Deemed for all purposes to represent	Until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing Securities will be deemed for all purposes, effective as of 8:00 AM New York time on September 26, 2008, to represent Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares, as applicable.
Bankruptcy Court Monthly Operating Reports	Trust I Trust II Trust III Trust IV Cayman	Washington Mutual Preferred Funding	Deemed for all purposes to represent	In accordance with the terms of the documents governing the Securities, the Conditional Exchange of the Securities occurred on Friday, September 26, 2008 at 8:00 A.M. (New York time) If and until such depositary receipts are delivered or in the event such depositary receipts are not delivered, any certificates previously representing Securities are deemed for all purposes, effective as of 8:00 AM (New York time) on September 26, 2008 to represent Fixed Rate Depositary Shares or Fixed-to-Floating Rate Depositary Shares, as applicable.

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
First Virginia Banks, Inc. Form DEF 14A filed 5/14/03, p. A-7.	Upon the Acquisition of First Virginia by BB&T Corp.	Common Stock of First Virginia to Common Stock of BB&T	As used herein, the term "Merger Consideration" shall mean the number of shares of BB&T Common Stock (to the nearest ten thousandth of a share) to be exchanged for each share of First Virginia Common Stock and cash (without interest) to be payable in exchange for any fractional share of BB&T Common Stock which would otherwise be distributable to a First Virginia shareholder as provided in Section 2.7(b). The number of shares of BB&T Common Stock (to the nearest ten thousandth of a share) to be issued for each issued and outstanding share of First Virginia Common Stock (the "Common Exchange Ratio") shall be 1.26. At the Effective Time, by virtue of the Merger and without any action on the part of First Virginia or the holders of record of First Virginia Common Stock, each share of First Virginia Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into and shall represent the right to receive, upon surrender of the certificate representing such share of First Virginia Common Stock the Merger Consideration. Until surrendered, each outstanding certificate which prior to the Effective Time represented one or more shares of First Virginia Common Stock shall be deemed upon the Effective Time for all purposes to represent only the right to receive the Merger Consideration and any declared and unpaid dividends with respect to First Virginia Common Stock and any declared and unpaid dividends with respect to First Virginia Common Stock and any declared and unpaid dividends or other distributions with respect to the Merger Consideration as provided in the last two sentences of Section 2.8(e).	7/2/03
BB&T Corporation Form S-4 filed 1/30/04, pp. A-7–8.	Upon the Acquisition of Republic Bancshares by BB&T Corp.	Common Stock of Republic to Common Stock of BB&T [+ Cash]	As used herein, the term "Merger Consideration" per share of Republic Common Stock shall mean the consideration described in (i) or (ii) below, as elected as provided in Section 2.8 by each Republic shareholder, and subject to adjustment as provided in paragraph (b) of this Section 2.7: (i) .81 (the "Exchange Ratio") shares of BB&T Common Stock (to the nearest ten thousandth of a share) to be exchanged for each share of Republic Common Stock subject to this election and owned by the shareholder as of the Effective Time (the "Stock Election")[.]	4/14/04

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			 (a) At the Effective Time, by virtue of the Merger and without any action on the part of Republic or the holders of record of Republic Common Stock, each share of Republic Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into and shall represent the right to receive, upon surrender of the certificate representing such share of Republic Common Stock (as provided in subsection (d) below), the Merger Consideration. (c) Until surrendered, each outstanding certificate which prior to the Effective Time represented one or more shares of Republic Common Stock shall be deemed upon the Effective Time for all purposes to represent only the right to receive the Merger Consideration and any declared and unpaid dividends with respect to Republic Common Stock. 	
Central Pacific Financial Corp. Form 8- K filed 4/27/04, Exhibit 99.2, Agreement and Plan of Merger dated April 22, 2004 between Central Pacific Financial Corp. and CB Bancshares, Inc, pp. 10–11.	Upon the Acquisition of CB Bancshares by Central Pacific.	Common Stock of CB to Common Stock of Central Pacific	At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of CB Bancshares Stock or Central Pacific Stock: [E]ach CB Share issued and outstanding immediately prior to the Effective Time, together with the related CB Bancshares Right attached thereto, will be converted into the right to receive, at the election of the holder thereof as provided in Section 3.03, either (i) cash (the "Cash Consideration") or (ii) a number of fully paid and nonassessable shares of Central Pacific Common Stock (the "Stock Consideration" and together with the Cash Consideration, the "Merger Consideration")[.] Certificates that represented CB Shares before the Effective Time will be deemed for all purposes to represent the right to receive the Merger Consideration and any dividends or other distributions pursuant to this Article III.	9/15/04

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Omega Financial Corp. Form 424B3 filed 8/10/04, pp. A-9, A-12.	Upon the Acquisition of Sun Bancorp by Omega Financial Corporation.	Common Stock of Sun to Common Stock of Omega [+ Cash]	At the Effective Time, each share of Sun Common Stock then issued and outstanding (other than shares held directly or indirectly by Omega, excluding shares held in a fiduciary capacity or in satisfaction of a debt previously contracted) shall, by virtue of the Merger and without any action on the part of the holder thereof, be converted into and represent the right to receive from Omega the Cash Merger Consideration and/or Stock Merger Consideration of Omega constituting the Per Share Merger Consideration[.]	10/1/04
			After the Effective Time and until properly surrendered to the Exchange Agent, each outstanding certificate or certificates which formerly evidenced and represented Sun Common Stock shall be deemed for all purposes to represent and evidence only the right to receive the aggregate Cash Merger Consideration or aggregate Stock Merger Consideration into which such Sun Common Stock was converted.	
First California Financial Group, Inc. Form 424B3 filed 2/21/07, pp. A-7–8.	Upon the Acquisition of FCB Bancorp by National Mercantile Bancorp.	Common Stock of FCB to Common Stock of National Mercantile	As of the Primary Merger Effective Time or Reincorporation Merger Effective Time, as the case may be, by virtue of the Primary Merger or the Reincorporation Merger, as the case may be, and without any action on the part of the holder of any shares of FCB Common Stock, NMB Common Stock, NMB Preferred Stock or Merger Sub Common Stock: Except as set forth in this Article III and except for shares owned by Dissenting Shareholders, each issued and outstanding share of FCB Common Stock immediately prior to the Primary Merger Effective Time shall be converted into a number of fully paid and nonassessable shares of Surviving Corporation Common Stock equal to the FCB Exchange Ratio. As of the Primary Merger Effective Time, all shares of FCB Common Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and from and after the Primary Merger Effective Time, certificates representing FCB Common Stock (other than shares to be canceled in accordance with Section 3.01(a)(i) and other than shares owned by Dissenting Shareholders) immediately prior to the Primary Merger Effective Time shall be deemed for all purposes to represent the number of shares of Surviving Corporation Common Stock into which they were converted pursuant to this subparagraph (b).	3/12/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
BB&T Corporation Form 424B3 filed 3/26/07, p. 35.	Upon the Acquisition of Coastal Financial by BB&T.	Common Stock of Coastal Financial to Common Stock of BB&T	Under the merger agreement, you will receive .385 of a share of BB&T common stock in exchange for each of your shares of Coastal Financial common stock. When the merger is completed, without any action on the part of Coastal Financial or the Coastal Financial shareholders, shares of Coastal Financial common stock will be converted into and will represent the right to receive, upon surrender of the certificate representing such shares as described below, the merger consideration described above, including cash instead of any fractional share of BB&T common stock that would otherwise be issued. After the merger is completed, and until surrendered as described above, each outstanding Coastal Financial stock certificate will be deemed for all purposes to represent only the right to receive the merger consideration.	5/1/07
New England Bancshares, Inc. Form 424B3 filed 5/18/07, pp. 37, A-5.	Upon the Acquisition of First Valley by New England Bancshares.	Common Stock of First Valley Bancorp to Common Stock of New England Bancshares [+ Cash]	After the effective time of the merger, and until surrendered as described above, each outstanding First Valley Bancorp stock certificate will be deemed for all purposes to represent only the right to receive the merger consideration. At the Effective Time, by virtue of the Merger and without any action on the part of the holders thereof, each share of First Valley Bancorp Common Stock issued and outstanding immediately prior to the Effective Time, other than any Dissenting Shares and Excluded Shares (as defined in Section 2.12 of this Agreement), shall, subject to the conditions hereinafter stated, be converted into and represent the right to receive (i) 0.8907 shares (the "Exchange Ratio") of New England Bancshares Common Stock (the "Stock Consideration") and (ii) an aggregate amount of \$9.00 in cash without interest (the "Cash Consideration"), together with the Stock Consideration, the "Per Share Merger Consideration")[.]	7/12/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Prosperity Bancshares, Inc. Form S-4 filed 6/12/07, pp. 15, 34, A- 3.	Upon the Acquisition of Bank of Navasota by Prosperity Bank.	Common Stock of Bank of Navasota to Common Stock of Prosperity Bancshares [+ Cash]	The merger consideration has been generally structured to provide that all outstanding shares of Bank common stock will be converted into an aggregate of 251,458 shares of Prosperity common stock and \$8,625,000 in cash, each subject to adjustment under certain circumstances as set forth in the reorganization agreement.	8/31/07
			At the effective time of the merger, and until surrendered as described above, each outstanding Bank stock certificate will be deemed for all purposes to represent only the right to receive the merger consideration to be paid pursuant to the reorganization agreement.	
			Unless otherwise adjusted as provided in Sections 2.2(b), 2.2(c) or 2.3 hereof, each share of Bank Common Stock issued and outstanding immediately prior to the Effective Time (other than any Dissenting Shares (as defined in Section 2.4 hereof)), shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and represent the right to receive (i) a number of shares of common stock, \$1.00 par value, of Prosperity ("Prosperity Common Stock") equal to the quotient (the "Exchange Ratio") obtained by dividing 251,458 (the "Stock Consideration") by the number of shares of Bank Common Stock outstanding immediately prior to the Effective Time ("Bank Closing Shares"), plus cash in lieu of any fractional share of Prosperity Common Stock and (ii) an amount of cash equal to \$8,625,000 (the "Cash Consideration," and together with the Stock Consideration, the "Merger Consideration") divided by the Bank Closing Shares (the "Per Share Cash Consideration").	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Porter Bancorp, Inc. Form S-4 filed 8/24/07, pp. 35, 39, A-6.	Upon the Acquisition of	Common Stock of Ohio Country Bancshares to Common Stock of Porter Bancorp [+ Cash]	Under the merger agreement, you will receive one of the following forms of payment of the merger consideration in exchange for each of your OCB common shares (subject to the limitations and adjustments discussed below): • 12.80 Porter common shares—the "share exchange amount"; • Cash in the amount of \$297.34—the "cash exchange amount"; or • A combination of cash and Porter common shares as designated on the election form by the OCB shareholder. After the merger is completed, and until surrendered as described above, each outstanding OCB stock certificate will be deemed for all purposes to represent only the right to receive the merger consideration. Except as otherwise provided in this Section 2.05, at the Effective Time, each Company Common Share issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and at the Effective Time, be converted at the election of the holder thereof (in accordance with the election and allocation procedures set forth in Section 2.05(b), (e), (h) and (i)) into the right to receive either (i) a number of Porter Bancorp Shares per Company Common Share equal to the Share Exchange Amount, (ii) an amount of cash per Company Common Share equal to \$297.34 (the "Cash Exchange Amount"); or (iii) a combination of Porter Bancorp Shares and cash, as more fully set forth in Section 2.05(b)(iii).	10/1/07
A. G. Edwards, Inc. Form DEFM 14A filed 8/30/07, pp. A-7–8.	Upon the Acquisition of A.G. Edwards by Wachovia.	Common Stock of A.G. Edwards to Common Stock of Wachovia [+ Cash]	At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares of A.G. Edwards Stock and subject to Sections 3.05 and 3.10, each share of A.G. Edwards Common Stock issued and outstanding immediately prior to the Effective Time will be converted into the right to receive: (a) 0.9844 (the "Exchange Ratio") of a fully paid and nonassessable share of Wachovia Common Stock (and the requisite number of Wachovia Rights issued and attached to such share under the Wachovia Rights Agreement) (the "Stock Consideration"); and (b) \$35.80 in cash (the "Cash Consideration" and, together with the Stock Consideration, the "Merger Consideration").	10/1/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			At the Effective Time, the shares of A.G. Edwards Common Stock will no longer be outstanding and will automatically be canceled and will cease to exist. Certificates that represented A.G. Edwards Common Stock before the Effective Time will be deemed for all purposes to represent the number of shares of Wachovia Common Stock, cash into which they were converted pursuant to Section 3.01 and cash payable pursuant to Section 3.05, and, as contemplated by the Wachovia Rights Agreement, attached Wachovia Rights.	
Eagle Bancorp, Inc. Form 8-K filed 12/3/07, Exhibit 2.1, Agreement and Plan of Merger, pp. 3, 6.	Upon the Acquisition of Fidelity & Trust Financial by Eagle Bancorp.	Common Stock of Fidelity to Common Stock of Eagle	At the Effective Time, each of the outstanding shares of common stock, \$.01 par value per share, of Fidelity ("Fidelity Common Stock") (excluding shares of Fidelity Common Stock held in treasury or by any Fidelity Subsidiary (other than in a fiduciary capacity), by Eagle or any Eagle Subsidiary (other than in a fiduciary capacity), or Dissenting Shares (as hereinafter defined)), shall automatically, and without further action, be converted into and exchangeable for the right to receive 0.9202 shares of Eagle Common Stock (the "Conversion Ratio), subject to adjustment in accordance with the provisions of Section 2.1(b) (the "Stock Consideration").	8/31/08
			Following the Effective Time, certificates which formerly represented shares of Fidelity Common Stock (except for certificates representing shares held in treasury or by any Fidelity Subsidiary (other than in a fiduciary capacity), by Eagle or any Eagle Subsidiary (other than in a fiduciary capacity) or Dissenting Shares)) shall be deemed for all purposes to represent the number of whole shares of Eagle Common Stock into which they have been converted, except that until exchanged in accordance with the provisions of this Section 2.3, the holders of such shares shall not be entitled to receive dividends or other distributions or payments in respect of Eagle Common Stock.	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
BGC Partners, Inc. Form PRER 14A filed 12/28/07, Amendment No. 1 to Proxy Statement, p. A-16.	Upon the Acquisition of BGC Partners by eSpeed.	Class A, B, and C Units of BGC Partners to Common Stock of eSpeed	Merger Consideration. (a) At the Effective Time, by virtue of the Merger and without any action on the part of the holder of any limited liability company interests in BGC Partners or of any eSpeed Common Stock and subject to Section 3.3: (i) each BGC Partners Class A Unit issued and outstanding immediately prior to the Effective Time shall be converted into one share of eSpeed Class A Common Stock; (ii) each BGC Partners Class B Unit issued and outstanding immediately prior to the Effective Time shall be converted into one share of eSpeed Class B Common Stock; and (iii) each BGC Partners Class C Unit issued and outstanding immediately prior to the Effective Time shall be converted into 100 shares of eSpeed Class B Common Stock. Certificates representing such BGC Partners Units, if any, prior to the Effective Time shall be deemed for all purposes to represent the number and class of shares of eSpeed Common Stock into which such BGC Partners Units were converted in the Merger pursuant to Section 3.1.	4/1/08
MiMedx Group, Inc. Form 8-K filed 2/8/08, Exhibit 10.25, Agreement and Plan of Merger by and among SpineMedica Corp. and MiMedx, Inc, pp. 6, 9.	Upon the Acquisition of SpineMedica by MiMedx.	Common and Preferred Stock of SpineMedica to Common and Preferred Stock of MiMedx	As of the Effective Time, by virtue of the Merger and without any action on the part of any shareholder of Acquisition Company or SpineMedica: (a) Each share of SpineMedica Common Stock that is issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and at the Effective Time, be converted into the right to receive one validly issued, fully paid, and non-assessable share of MiMedx Common Stock. (b) Each share of SpineMedica Series A Convertible Preferred Stock that is issued and outstanding immediately prior to the Effective Time shall, by virtue of the Merger and at the Effective Time, be converted into the right to receive: (i) one validly issued, fully paid, and non-assessable share of MiMedx Series B Convertible Preferred Stock and (ii) a warrant for the right to purchase one share of MiMedx Common Stock, with an exercise price of \$0.01 per share.	7/23/07

Conversion Trigger	Conversion Type	Excerpt	Effective Date
		Until so surrendered, each outstanding SpineMedica Certificate shall, upon and after the Effective Date of the Merger, be deemed for all purposes to represent and evidence only the right to receive payment therefor as aforesaid.	
Upon the Acquisition of 1st Choice Bancorp by Prosperity Bancshares.	Common Stock of 1st Choice to Common Stock of Prosperity [+ Cash]	Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time, including any stock appreciation rights or any options, warrants or other rights to acquire, or convertible into, any capital stock of the Company (other than any Dissenting Shares (as defined in Section 2.4 hereof)), shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and represent the right to receive (i) a number of shares of common stock, \$1.00 par value, of Prosperity ("Prosperity Common Stock") plus cash in lieu of any fractional share of Prosperity Common Stock, and (ii) unless otherwise adjusted as provided in Section 2.3, an amount of cash equal to \$18,750,000 (the "Cash Consideration," and together with the Stock Consideration, the "Merger Consideration"), divided by the Company Closing Shares (the "Per Share Cash Consideration"). At the Effective Time, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and retired	6/1/08
		and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive the Merger Consideration.	
Upon the Acquisition of Receptopharm by Nutra Pharma.	Common Stock of Receptopharm to Common Stock of Nutra Pharma	At the Effective Time, all of the issued and outstanding shares of capital stock of Acquisition and Receptopharm shall, by virtue of the Merger and without any action on the part of the respective holders thereof, be converted as follows:	4/10/08
	Upon the Acquisition of 1st Choice Bancorp by Prosperity Bancshares. Upon the Acquisition of Receptopharm by Nutra	Upon the Acquisition of 1st Choice Bancorp by Prosperity Bancshares. Upon the Acquisition of 1st Choice to Common Stock of Prosperity [+ Cash] Upon the Acquisition of Receptopharm by Nutra Common Stock of 1st Choice to Common Stock of Prosperity [+ Cash]	Upon the Acquisition of 1st Choice to Common Stock of 1st Choice Bancorp by Prosperity [+ Cash] Upon the Acquisition of 1st Choice to Common Stock of 1st Choice to Common Stock of 1st Choice Bancorp by Prosperity [+ Cash] Each share of Company Common Stock issued and outstanding immediately prior to the Effective Time, including any stock appreciation rights or any options, warrants or other rights to acquire, or convertible into, any capital stock of the Company (other than any Dissenting Shares (as defined in Section 2.4 hereof)), shall, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled and converted into and represent the right to receive (i) a number of shares of common stock, \$1.00 par value, of Prosperity ("Prosperity Common Stock,") plus cash in lieu of any fractional share of Prosperity Common Stock, and (ii) unless otherwise adjusted as provided in Section 2.3, an amount of cash equal to \$18,750,000 (the "Cash Consideration"), divided by the Company Closing Shares (the "Per Share Cash Consideration"). At the Effective Time, all such shares of Company Common Stock shall no longer be outstanding and shall automatically be canceled and retired and shall cease to exist, and each certificate previously representing any such shares shall thereafter represent the right to receive the Merger Consideration. Common Stock of Receptopharm by Nutra Pharma. Common Stock of Nutra Pharma Common Stock of Nutra Pharma Common Stock of Nutra Pharma Nithout any action on the part of the respective holders thereof, be

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Source	Conversion Trigger	Conversion Type	(b) Each share of Receptopharm Common Stock (other than shares of Receptopharm Common Stock owned by Nutra Pharma or any subsidiary of Nutra Pharma) shall be converted into four (4) shares of common stock, par value \$.0001 per share (the "Nutra Pharma Common Stock"), of Nutra Pharma (collectively, the "Merger Consideration"); provided that in no event shall the number of shares of Nutra Pharma Common Stock issued in connection with the transactions contemplated by this Agreement exceed thirty million (30,000,0000) shares. After the Effective Time, and until surrendered, each outstanding certificate which, prior to the Effective Time represented shares of Receptopharm Common Stock (each, a "Receptopharm Certificate"), shall be deemed for all purposes to represent only the right to receive four (4) shares of Nutra Pharma Common Stock multiplied by the number of shares of Receptopharm formerly represented by such Receptopharm Certificate.	Effective Date

Source: SEC filings; Westlaw Business

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
TBC Corp. Form 8-K123G, filed 11/24/04, Exhibit 2.1, Agreement and Plan of Merger Pursuant to Section 251(g) of the Delaware General Corporation Law, p. 3.	Upon the Acquisition of TBC Merger Corp. by TBC Corporation.	Common Stock of TBC Private Brands to Common Stock of TBC Corporation	At the Effective Time, by virtue of the Merger and without any action on the part of any holder thereof, each share of Common Stock, \$0.10 par value per share, of TBC outstanding immediately prior thereto shall be changed and converted into one fully paid and nonassessable share of Common Stock, \$0.10 par value per share, of the Holding Company. The conversion of these shares will occur by virtue of the Merger and without an exchange of certificates, and each certificate representing shares of Common Stock of TBC issued and outstanding immediately prior to the Merger will, upon completion of the Merger, represent shares of Common Stock of the Holding Company. At and after the Effective Time, all of the outstanding certificates that prior to that time represented shares of Common Stock of TBC shall be deemed for all purposes to evidence the same number of shares of Common Stock of the Holding Company.	11/19/04
Precision Aerospace Components, Inc. Form 8-K filed 1/9/06, Exhibit 10.2, Agreement and Plan of Merger.	Upon the Acquisition of Gasel International by Jordan 1 Holdings.	Common or Preferred Stock of Gasel to Common or Preferred Stock of Jordan 1	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof: a. each share of Gasel Common Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of Jordan Common Stock; b. each share of Gasel Preferred Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of Jordan Preferred Stock At and after the Effective Time, all of the outstanding certificates which immediately prior thereto represented shares Gasel Capital Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of Jordan Capital Stock, as the case may be, into which the shares of Gasel Capital Stock represented by such certificates have been converted as herein provided and shall be so registered on the books and records of Jordan and its transfer agent.	12/30/05

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
XO Holdings, Inc. Form 8-K filed 3/6/06, Exhibit 2.1, Agreement and Plan of Merger, p. 4.	Upon the Acquisition of XO Communications by XO Holdings.	Common Stock of XO Communications to Common Stock of XO Holdings	At the Effective Time, as a result of the Merger and (except as provided in Section 2.1(c)) without any action on the part of the Company, Holdings or XO LLC or the holders of any securities of any of the foregoing entities: (a)each certificate (a "Company Common Certificate") formerly representing any of such Company Common Shares shall thereafter be deemed for all purposes to represent the number of Holdings Common Shares into which such Company Common Shares were converted pursuant to this Section 2.1(a) until such time as the holder thereof shall, pursuant to Section 2.3, have exchanged such Company Common Certificate for a certificate representing the Holdings Common Shares into which the Company Common Shares formerly represented by such Company Common Certificate were so converted.	2/28/06
Leslie's Poolmart, Inc. Form 10-Q filed 2/9/07, Exhibit 2.1, Agreement and Plan of Merger to Form Holding Company, pp. 3, 5.	Upon the Acquisition of Leslie's Poolmart by Leslie's Holdings.	Common and Preferred Stock of Leslie's Poolmart to Common and Preferred Stock of Leslie's Holdings	At the Effective Time, by virtue of the Merger and without any action on the part of Leslie's, Holdings, Merger Sub or the holders of any securities of Leslie's, Holdings or Merger Sub: (i) each share of Leslie's Common Stock (or fraction of a share of Leslie's Common Stock, including shares held by Leslie's) issued and outstanding immediately prior to the Effective Time, shall be converted into one share of Holdings Common Stock (ii) each share of Leslie's Preferred Stock (or fraction of a share of Leslie's Preferred Stock, including shares held by Leslie's) issued and outstanding immediately prior to the Effective Time, shall be converted into one share of Holdings Preferred Stock Any Leslie's Certificate shall be deemed to represent a certificate representing Holdings Common Stock or Holdings Preferred Stock, as applicable, from and after the Effective Time until such Leslie's Certificate is surrendered pursuant to this Section 1.7.	February 2007
Gemstar-TV Guide International, Inc. Form 8-K filed 12/7/07, Exhibit 2.1, Agreement and Plan of Merger, p. 8.	Upon the Acquisition of Gemstar-TV Guide by Macrovision.	Common Stock of Macrovision Merger Sub to Common Stock of Macrovision	At the Effective Time, by virtue of the Mars Merger and without any action on the part of the parties hereto or the holders of any securities of any of the parties hereto: Each share of common stock, par value \$0.001 per share, of [Macrovision] outstanding immediately prior to the Effective Time other than [Macrovision] Shares to be cancelled pursuant to Section 2.2(c), shall be converted automatically into and shall thereafter represent the right to receive one fully paid and non-assessable Holdco Share	5/2/08

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			Each share of common stock, par value \$0.001 per share, of Mars Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value \$0.001 per share, of the Mars Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Mars Surviving Corporation. From and after the Effective Time, all certificates representing the common stock of Mars Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Mars Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.	
Digitiliti Inc. Form 10- 12G filed 5/13/08, Exhibit 10.2, Agreement and Plan of Merger.	Upon the Acquisition of Themescapes, Inc. by Cyclone Holdings, Inc.	Common Stock of Themescapes to Common Stock of Cyclone	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof: (a) Each share of Themescapes Common Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable shares of Cyclone Common Stock; At and after the Effective Time, all of the outstanding certificates which immediately prior thereto represented shares of Themescapes Common Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of Cyclone Common Stock, as the case may be, into which the shares of Themescapes Common Stock represented by such certificates have been converted as herein provided and shall be so registered on the books and records of Cyclone and its transfer agent.	4/5/2006 ¹

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Silver Falcon Mining, Inc., Form 10-12G filed 8/17/09, Exhibit 2.1, Agreement and Plan of Merger, pp. 3–4.	Upon the Acquisition of Dicut Holdings, Inc. by Dicut KLM, Inc.	Class A and Class B Common Stock of Dicut to Class A and Class B Common Stock of Silver Falcon	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof: (a) each share of Class A Common Stock of Dicut issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of Class A Common Stock of Silver Falcon; (b) each share of Class B Common Stock of Dicut issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of Class B Common Stock of Silver Falcon; At and after the Effective Time, all of the outstanding certificates which immediately prior thereto represented shares of Dicut Capital Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of Silver Falcon Capital Stock into which the shares of Dicut Capital Stock represented by such certificates have been converted as herein provided and shall be so registered on the books and records of Silver Falcon and its transfer agent.	10/15/07
Cano Petroleum Inc., Form 10SB12G filed 9/4/03, Exhibit 10.1, Agreement and Plan of Merger.	Upon the Acquisition of Calypso Enterprises, Inc. by Calypso Merger, Inc.	Common and Preferred Stock of CEI to Common and Preferred Stock of HVI	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof: (a) each share of CEI Common Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of HVI Common Stock; (b) each share of CEI Preferred Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of HVI Preferred Stock; At and after the Effective Time, all of the outstanding certificates which immediately prior thereto represented shares of CEI Capital Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of HVI Capital Stock, as the case may be, into which the shares of CEI Capital Stock represented by such certificates have been converted as herein provided and shall be so registered on the books and records of HVI and its transfer agent.	6/3/03

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Environmental Power Corp., Form 8-K filed 6/2/03, Exhibit 2.1, Agreement and Plan of Merger, pp. 2–3.	Upon the Acquisition of Environmental Power Corp., by EPC Holdings 1, Inc.	Common Stock of Environmental Power Corporation to Common Stock of EPC Holdings 1, Inc.	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof, (i) each share of EPC Common Stock issued and outstanding immediately prior thereto shall be changed and converted into and represent the right to receive one fully paid and non-assessable share of EPC Holdings Common Stock At and after the Effective Time, all of the outstanding certificates which prior to that time represented shares of the Common Stock of the Surviving Company shall be deemed for all purposes to evidence ownership of and to represent the shares of EPC Holdings into which the shares of the Surviving Company represented by such certificates have been converted as herein provided.	6/2/03
Environmental Energy Services Inc., Form 8- K filed 7/6/01, Exhibit 2.1, Agreement and Plan of Merger.	Upon the Acquisition of WasteMasters, Inc., by WasteMasters Holdings, Inc.	Common and Preferred Stock of WMI to Common and Preferred Stock of EEI	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof: (a) each share of WMI Common Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of EEI Common Stock; (b) each share of WMI Preferred Stock issued and outstanding immediately prior to the Effective Time shall be changed and converted into and shall be one fully paid and nonassessable share of EEI Preferred Stock; At and after the Effective Time, all of the outstanding certificates which immediately prior thereto represented shares of WMI Capital Stock shall be deemed for all purposes to evidence ownership of and to represent the shares of EEI Capital Stock, as the case may be, into which the shares of WMI Capital Stock represented by such certificates have been converted as herein provided and shall be so registered on the books and records of EEI and its transfer agent.	6/29/01

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Pegasus Satellite Communications Inc., Form 10-K405, filed 4/2/01, Exhibit 2.3, Agreement and Plan of Merger, pp. 4–5.	Upon the Acquisition of Pegasus Merger Sub, Inc. by Pegasus Communications	Common and Preferred Stock of Pegasus Communications Corporation to Common and Preferred Stock of Pegasus Holdings Corporation I	At the Effective Time, by virtue of the Merger and without any action on the part of Holdings, Merger Sub, the Company or any holder of capital stock of the Company, Holdings or Merger Sub, (i) each share of Company Class A Common Stock) issued and outstanding immediately prior to the Effective Time (including treasury shares) shall be converted into one duly issued, fully paid and nonassessable share (or equal fraction of a share) of Holdings Class A Common Stock, (ii) each share of Company Class B Common Stock shall be converted into one duly issued, fully paid and nonassessable share (or equal fraction of a share) of Holdings Class B Common Stock, (iii) each share of Company Non-Voting Common Stock shall be converted into one duly issued, fully paid and nonassessable share (or equal fraction of a share) of Holdings Non-Voting Common Stock, and (iv) each share of Company Series A, B, C, D and E Preferred Stock shall be converted into one share of Holdings Series A, B, C, D and E Preferred Stock, respectively[.] Until thereafter surrendered for transfer or exchange, each outstanding stock certificate that, immediately prior to the Effective Time, evidenced Company Class A or B Common Stock, Company Non-Voting Common Stock or Company Series A, B, C, D or E Preferred Stock shall be deemed and treated for all corporate purposes to evidence the ownership of the number of shares of Holdings Class A or B Common Stock, Holdings Non-Voting Common Stock or Holdings Series A, B, C, D or E Preferred Stock, respectively, into which such shares of Company capital stock were converted pursuant to the provisions of Section 2.1 above.	2/22/01
Airborne Freight Corp, Form 8-K12G3, filed 12/26/00, Exhibit 2, Agreement and Plan of Merger.	Upon the Acquisition of AEX Merger, Inc. by Airborne Freight Corporation.	Common Stock of AEX Merger, Inc. to Common Stock of Airborne Freight Corporation	Each certificate for shares of Merger Sub Common then outstanding shall, by virtue of the merger and without any action on the part of AFC, Merger Sub, Holdings, or the holder thereof, automatically be deemed to represent the same number of shares of common stock, par value \$1.00 per share, of the Surviving Corporation.	12/26/00

Source Conversion Trigger Conversion Type	Excerpt	Effective Date
Rent-A-Center, Inc. Form 8-K, filed Merger Sub, Inc., by Rent-A- 12/31/02, Exhibit 2.1, Agreement and Plan of Merger, pp. 4–5. Wender of the Acquisition of Merger Sub, Inc., by Rent-A- Center, Inc. Center, Inc. to Common and Series A Preferred (and Series A Preferred (It the Effective Time, by virtue of the Merger and without any action on the part of Holdings, Merger Sub, the Company or the holder of any of the following securities: (a) Conversion of the Company Common Stock. Each share of the company Common Stock (or fraction of a share of the Company Common Stock) issued and outstanding immediately prior to the ffective Time shall be converted into and thereafter represent one duly sued, fully paid and nonassessable share (or equal fraction of a share) of the Holdings Common Stock. (b) Conversion of the Company Series A Preferred Stock. Each share of the Company Series A Preferred Stock (or fraction of a share of the company Series A Preferred Stock) issued and outstanding immediately prior to the Effective Time shall be converted into and thereafter represent one duly issued, fully paid and nonassessable share (or equal fraction of a share) of the Holdings Series A Preferred Stock. (a) Intil thereafter surrendered for transfer or exchange, each outstanding fock certificate that, immediately prior to the Effective Time, evidenced the Company Common Stock or the Company Series A Preferred Stock are all be deemed and treated for all corporate purposes to evidence the whership of the number of shares of the Holdings Common Stock or the oldings Series A Preferred Stock, as applicable, into which such shares if the Company Common Stock or the Company Series A Preferred tock were converted pursuant to the provisions of Section 1.8 herein, inless otherwise determined by the board of directors of Holdings.	12/31/02

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
PC Connection Inc, Form 8-K filed 1/3/00, Exhibit 2, Agreement and Plan of Merger, p. 4.	Upon the Acquisition of PC Transitory Corp. by PC Connection, Inc.	Common Stock of PC Connection, Inc., to Common Stock of PC Holdo, Inc.	At the Effective Time, by virtue of the Merger and without any action on the part of Holding, Merger Sub, the Company or the holder of any of the following securities: (a) Conversion of Company Common Stock. Each share of Company Common Stock (or fraction of a share of Company Common Stock) issued and outstanding immediately prior to the Effective Time shall be converted into and thereafter represent one duly issued, fully paid and nonassessable share (or equal fraction of a share) of Holding Common Stock. Until thereafter surrendered for transfer or exchange, each outstanding stock certificate that, immediately prior to the Effective Time, evidenced Company Common Stock shall be deemed and treated for all corporate purposes to evidence the ownership of the number of shares of Holding Common Stock into which such shares of Company Common Stock were converted pursuant to the provisions of Section 1.8(a) herein.	1/1/00
Roadway Corp, Form 8-A12G, filed 5/30/01, Exhibit 2.1, Agreement and Plan of Merger by and among Roadway Express and Roadway Corporation, pp. 3–4.	Upon the Acquisition of Roadway Merger Corp. by Roadway Express, Inc.	Common Stock of Roadway Express to Common Stock of Roadway Holdings	At the Effective Time, by virtue of the Merger and without any action on the part of Roadway Express, Roadway Holdings, Merger Sub or the holders of any securities of the foregoing corporations: Each share of common stock, par value \$0.01 per share, of Roadway Express ("ROADWAY EXPRESS COMMON STOCK") issued and outstanding or held in its treasury immediately prior to the Effective Time shall be converted into one share of common stock, par value \$0.01 per share, of Roadway Holdings ("ROADWAY HOLDINGS COMMON STOCK"), and shall have the same designations, rights and powers and preferences, and the qualifications, limitations and restrictions thereof, as the Roadway Express Common Stock being converted. Each certificate representing shares of Roadway Express Common Stock immediately prior to the Effective Time shall be deemed to represent the same number of shares of Roadway Holdings Common Stock.	5/30/01

Source: SEC Filings; Westlaw Business

Note:

^[1] The exact date the merger became effective is not known, however it is known that the merger was eventually made effective. See Digitiliti, Inc. Form 10-12G filed 5/13/08, which states that: "Pursuant to an Agreement and Plan of Merger dated as of March 31, 2006, between us, Themescapes and Bulldog Merger, Inc., a Delaware corporation ('Bulldog'), we became a holding company under Section 251 (G) of the Delaware General Corporation Law; Themescapes was merged with and into Bulldog; and shares of our common stock were exchanged for outstanding shares of common stock of Themescapes (the 'Themescapes Merger')."

Appendix D Short-Form Mergers

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Motor Cargo Industries, Inc. Form SC 13E3/A filed 1/24/02, Schedule 13E–3 Amendment No. 3, pp. 8–9.	Upon acquisition of Motor Cargo Industries, Inc. by Union Pacific Corporation	Common Stock of Motor Cargo Industries to Union Pacific Common Stock [+ Cash]	At the Effective Time, by virtue of the Merger and without any action on the part of the holders of any securities of Merger Sub or the Company: (b) Each issued and outstanding Company Share (other than Company Shares to be cancelled in accordance with Section 3.3(a) hereof and Dissenting Shares) shall automatically be converted into the right to receive the Per Share Cash Consideration in cash (the "Merger Consideration"), payable, without interest, to the holder of such Company Share upon surrender, in the manner provided in Section 3.4 hereof, of the certificate that formerly evidenced such Company Share. Until surrendered as contemplated by this Section 3.4, each Certificate shall be deemed at any time after the Effective Time to represent only the right to receive the Merger Consideration for each Company Share in cash as contemplated by Section 3.3(b) hereof.	2/14/02
AvisBudget Group, Inc. Form 424B3 filed 5/30/02, p. 6.	Upon the Acquisition of Trendwest by Cendant.	Common Stock of Trendwest to Common Stock of Cendant	At the effective time of the merger, Trendwest common stock (other than Trendwest common stock held by Cendant or any wholly owned subsidiary of Cendant) will be converted, without any action on the part of the holder, in accordance with the exchange procedures below, into the right to receive, for each share of Trendwest common stock, the merger consideration. The merger consideration will be based on an exchange ratio of 1.3074 shares of CD Common Stock for each share of Trendwest common stock[.]	6/3/02
Obsidian Enterprises, Inc. Form 13E-3/A filed 1/31/06, Transaction Statement Supplement dated 1/30/06, p. B-2.	Upon the Acquisition of Obsidian Enterprises by Black Rock Acquisition.	Common Stock of Black Rock Acquisition to Common Stock of Obsidian Enterprises	As of the Effective Time, by virtue of the Merger and by operation of law, each of the issued and outstanding shares of common stock of Parent shall be converted into one (1) share of common stock of Subsidiary. Following the Effective Time, the Surviving Corporation shall issue certificates for its common shares upon surrender of the Parent stock certificates for the shares that are to be converted in the Merger. Until so surrendered, certificates of Parent shall be deemed to represent the ownership, for all purposes, of an equivalent number of shares of common stock of the Surviving Corporation.	3/17/06

Appendix D Short-Form Mergers

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Northland Cranberries, Inc. Form SC 13E3/A filed 11/4/05, Amendment No. 2.	Upon acquisition of New Harvest, Inc. by Northland Cranberries, Inc.	Common Stock of New Harvest to Class A Common Stock of Northland Cranberries	At the Effective Time, in accordance with the terms and conditions set forth in this Plan of Merger, and by virtue of the Merger and without any action on the part of any holder of shares of common stock, \$0.01 par value per share, of Parent ("Parent Common Stock"), each share of Parent Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one (1) share of Class A Common Stock, \$0.01 par value per share, of the Surviving Corporation.	11/28/05
Fluid Media Networks, Inc. Form 8-K filed 2/21/07, Exhibit 10.2, Plan and Agreement of Merger, p. 2.	Upon acquisition of Fluid Audio Networks by Freedom 20.	Common Stock of Fluid Audio Networks to Common Stock of Freedom 20	At the Effective Time, each issued and outstanding Share of the Parent shall be (other than Shares to be cancelled in accordance with Section (d) above) converted into one share of common stock in the Sub (the "Offer Price"), without surrender of the certificate formerly representing such Share (each a "Subs Certificate") in the manner provided in (f) below. From and after the Effective Time, all such converted Shares shall no longer be outstanding and shall be deemed to be cancelled and retired and shall cease to exist, and each holder of any such Shares shall cease to have any rights with respect to any Parent Certificate except the right to receive shares in the Sub equal to the number of shares owned in the Parent (the "Merger Consideration").	5/17/07
Avanir Pharmaceuticals, Inc. Form DEF 14A filed 1/4/08, p. E-1.	Upon acquisition of Avanir California by Avanir Delaware.	Common Stock of Avanir California to Common Stock of Avanir Delaware	[B]y virtue of the Merger and without any action on the part of the holder thereof, each then outstanding share of Class A Common Stock of Parent shall be converted into and shall automatically become one share of Common Stock of the surviving corporation, held by the person who was the holder of such share of Class A Common Stock of Parent immediately prior to the Merger[.]	3/23/09
Middle Kingdom Alliance Corp. Form DEF 14A filed 11/24/08, p. 3.	Upon the Acquisition of Middle Kingdom by MK Arizona.	Class B Common Stock of Middle Kingdom for Common Stock of MK Arizona	If a Business Combination is approved in accordance with sub-paragraph (1), above, and is consummated by the Corporation, then, in such event: (ii) thereafter, all of the remaining outstanding shares of Class B Common Stock for which conversion has not been demanded shall be deemed to automatically convert, effective as of the consummation of the Business Combination, into the same number of shares of Common Stock.	7/9/09

Appendix D Short-Form Mergers

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
China Cord Blood Corp. Form POS AM filed 7/7/09, Post–Effective Amendment No. 3, p. A-5.	Upon the Acquisition of Pantheon by Pantheon Arizona.	Common Stock of Pantheon China Acquisition to Common Stock of Pantheon Arizona	At the Conversion Effective Time, by virtue of the Conversion and without any action on the part of the holder of any shares: (a) Conversion of Pantheon Arizona Shares. Except as set forth in Section 4.1(b) above, each issued and outstanding Pantheon Arizona Share shall be automatically converted into one validly issued, fully paid and non-assessable Pantheon Cayman Share in accordance with Section 4.3. From and after the Merger Effective Time, all of the certificates which immediately prior to that time represented outstanding Pantheon Securities (the "Certificates") shall be deemed for all purposes to evidence ownership of, and to represent, the Pantheon Arizona Securities into which the Pantheon Securities represented by such Certificates have been converted as herein provided.	6/30/09
Searchmedia Holdings Ltd. Form S-4/A filed 7/15/09, p. A-14.	Upon the Acquisition of Ideation by ID Arizona.	Common Stock of Ideation Acquisition to Common Stock of ID Arizona	At the Merger Effective Time, by virtue of the Merger and without any action on the part of the holder of any shares: (a) Conversion of Ideation Shares. Each Ideation Share issued and outstanding immediately prior to the Merger Effective Time shall be automatically converted into one validly issued, fully paid and non-assessable ID Arizona Share, to be delivered by ID Arizona in accordance with Section 4.3 below. From and after the Merger Effective Time, all of the certificates and other documents or instruments that immediately prior to that time represented outstanding Ideation Securities ("Certificates") shall be deemed for all purposes to evidence ownership of, and to represent, the ID Arizona Securities into which the Ideation Securities represented by such Certificates have been converted as herein provided. No certificates for ID Arizona Securities will be issued as a result of the Merger, and no holder of record of any Certificates shall be entitled to surrender any Certificate for cancellation to ID Arizona or its transfer agent in exchange for a certificate representing that number of ID Arizona Securities which such holder has the right to receive pursuant to the provisions of this Article IV.	10/30/09

Source: SEC filings; Westlaw Business

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Vubotics, Inc. Form DEF 14A filed 1/3/07, pp. 2, A-3.	Upon Effective Date of Acquisition of Vubotics Nevada by Vubotics Georgia.	Common Stock of Vubotics Nevada to Common Stock of Vubotics Georgia	Each of your shares of common stock, par value \$.001, of Vubotics, Inc., with respect to which you have not validly perfected dissenters' rights, automatically would be converted into one share of common stock, par value \$.001, of Vubotics Georgia. You would not need to exchange your existing stock certificates for stock certificates of the Surviving Corporation. After the Effective Date of the Merger, each holder of an outstanding certificate representing Vubotics Nevada Common Stock (excluding holders of certificates who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Agreement) may, at such holder's option, surrender the same for cancellation to such entity as the Surviving Corporation so designates as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the Merger Consideration. Until so surrendered, each outstanding certificate theretofore representing Vubotics Nevada Common Stock shall be deemed for all purposes to represent the Merger Consideration	Unknown ¹
EnergySouth, Inc. Form 8-K filed 2/1/07, Exhibit 2.1, Agreement and Plan of Merger, pp. 3–4.	Upon Effective Date of Acquisition of EnergySouth Alabama by EnergySouth Delaware.	Common Stock of EnergySouth Alabama to Common Stock of EnergySouth Delaware	Upon the Effective Date of the Merger, each share of EnergySouth Alabama Common Stock (excluding shares held by shareholders who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Agreement) that is issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into the right to receive one fully paid and nonassessable share of EnergySouth Delaware Common Stock (the "Merger Consideration"). Upon the Effective Date of the Merger, each share of EnergySouth Delaware Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be cancelled without compensation therefor and returned to the status of authorized but unissued shares.	2/1/2007
Noninvasive Medical Technologies, Inc. Form SB-2 filed 2/13/07, Exhibit 2.1, Agreement and Plan of Merger of NMT, Inc. (Delaware) and NMT, Inc. (Michigan).	Upon Effective Date of Acquisition of NMT Michigan by NMT Delaware.	Common Stock of NMT Michigan to Common Stock of NMT Delaware	Upon the Effective Date of the Merger, each percentage of NMT Michigan ownership interest, issued and outstanding immediately prior thereto shall, by virtue of the Merger, and without any action by the Constituent Entities, by the holder of such ownership interest, be converted into and exchanged for 100,000 fully paid and nonassessable shares of Common Stock, \$0.0001 par value, of the Surviving Corporation[.]	9/27/06

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			After the Effective Date of the Merger, each holder of an outstanding certificate representing ownership interests of NMT Michigan may be asked to surrender the same for cancellation to the Surviving Corporation, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the ownership interests of NMT Michigan, as the case may be, into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing ownership interests of NMT Michigan shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock, respectively, into which such ownership interests of NMT Michigan, as the case may be, were converted in the Merger.	
KKR Financial Corp. Form DEF 14A filed 4/2/07, pp. 65, B-16.	Upon the Acquisition of KKR Financial Corp. by KKR Financial Holdings LLC.	Common Stock of KKR Financial Corp. to Common Stock of KKR Financial Holdings LLC	American Stock Transfer & Trust Company will act as exchange agent for the merger. As soon as reasonably practicable after the completion of the merger, American Stock Transfer & Trust Company will mail to each registered holder of a certificate of KKR Financial Corp. common stock a letter of transmittal containing instructions for surrendering their certificates. Holders who properly surrender their certificates will receive certificates representing their shares of KKR Financial Holdings LLC. The surrendered certificates will be cancelled. Upon the effectiveness of the merger, each certificate representing shares of common stock of KKR Financial Corp. will be deemed for all purposes to represent the same number of shares of KKR Financial Holdings LLC until such certificate is exchanged for a certificate representing shares of KKR Financial Holdings LLC. Notwithstanding anything set forth in this Agreement, (i) at the Effective Time (as defined in the Merger Agreement) and without any further action on the part of any Person, each share of common stock, par value \$0.01 per share, of KKR Financial Corp. issued and outstanding immediately prior to the Effective Time ("Corporation Shares") shall be converted into the right to receive one common share[.]	5/4/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Health Discovery Corp. Form 8-K filed 4/20/07, Exhibit 99.1, Notice of a Special Meeting of Shareholders to be Held on May 22, 2007, p. A-2–3.	Upon the Acquisition of Health Discovery Texas by Health Discovery Georgia.	Common Stock of Health Discovery Texas to Common Stock of Health Discovery Georgia	Upon the Effective Date, each share of common stock in the Converting Entity (excluding shares held by shareholders who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Plan) that is issued and outstanding immediately prior thereto shall, by virtue of the Conversion and without any action by the Converting Entity or the Converted Entity, the holder of such shares or any other person, be converted into the right to receive one fully paid and nonassessable share of common stock in the Converted Entity (the "Conversion Consideration"). As of the Effective Date, all shares of common stock in the Converting Entity shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and each certificate that previously represented such shares of common stock in the Converting Entity shall thereafter represent the Conversion Consideration for all such shares. After the Effective Date, each holder of an outstanding certificate representing shares of common stock in the Converting Entity (excluding holders of certificates who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Plan) may, at such holder's option, surrender the same for cancellation to such entity as the Converted Entity so designates as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the Conversion Consideration. Until so surrendered, each outstanding certificate theretofore representing shares of common stock in the Converting Entity shall be deemed for all purposes to represent the Conversion Consideration and the associated Rights.	7/12/07
VirnetX Holding Corp. Form DEFM 14C filed 5/3/07, Exhibit 10, Agreement and Plan of Merger of PASW Delaware and PASW California, pp. 4–5.	Upon the Acquisition of PASW California by PASW Delaware.	Common Stock of PASW California to Common Stock of PASW Delaware	Upon the Effective Date of the Merger, each one share of PASW, Inc. California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such share or any other person, be converted into and exchanged for one fully paid and nonassessable share of Common Stock, \$0.00001 par value, of the Surviving Corporation	5/30/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			After the Effective Date of the Merger, each holder of an outstanding certificate representing PASW, Inc. California Common Stock may, at such holder's option, surrender the same for cancellation to Corporate Stock Transfer, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as provided herein. Until so surrendered, each outstanding certificate theretofore representing shares of PASW, Inc. California capital stock shall be deemed for all purposes to represent the number of whole shares of the appropriate class and series of the Surviving Corporation's capital stock into which such shares of PASW, Inc. California capital stock were converted in the Merger.	
ThermoEnergy Corporation Form DEF 14A filed 5/18/2007, p. B-3.	Upon the Acquisition of TMEN Arkansas by TMEN Delaware.	Common and Preferred Stock of TMEN Arkansas to Common and Preferred Stock of TMEN Delaware	Upon the Effective Date of the Merger, each share of TMEN Arkansas Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be automatically converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation. After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of TMEN Arkansas Common Stock may, at such stockholder's option, surrender the same for cancellation to Registrar and Transfer Company, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as provided herein. Unless and until so surrendered, each outstanding certificate theretofore representing shares of TMEN Arkansas Common Stock, par value \$0.001 per share, shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock, par value \$0.001 per share, into which such shares of TMEN Arkansas common stock were converted in the Merger.	June 2007

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
VillageEDOCS, Inc. Form DEF 14A filed 5/21/07.	Upon the Acquisition of VillageEDOCS California by VillageEDOCS Delaware.	Common and Preferred Stock of VillageEDOCS California to Common and Preferred Stock of VillageEDOCS Delaware	Upon the Effective Time of the Merger, (i) each share of VillageEDOCS California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, no par value, of the Surviving Corporation, and (ii) each share of VillageEDOCS California Series A Preferred Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Series A Preferred Stock, \$0.001 par value, of the Surviving Corporation,.	9/8/07
			After the Effective Time of the Merger, each holder of an outstanding certificate representing shares of VillageEDOCS California Common Stock or Series A Preferred Stock may, at such stockholder's option, surrender the same for cancellation to U.S. Stock Transfer, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock or Series A Preferred Stock, as applicable, into which the surrendered shares were converted as herein provided.	
			Until so surrendered, each outstanding certificate theretofore representing shares of VillageEDOCS California Common Stock and Series A Preferred Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock or Series A Preferred Stock, as applicable, into which such shares were converted in the Merger. The registered owner on the books and records of the Surviving Corporation or the Exchange Agent of any such outstanding certificate shall, until such certificate shall have been surrendered for transfer or conversion or otherwise accounted for to the Surviving Corporation or the Exchange Agent, have and be entitled to exercise any voting and other rights with respect to and to receive dividends and other distributions upon the shares of Common Stock or Series A Preferred Stock, as applicable, of the Surviving Corporation	

represented by such outstanding certificate as provided above.

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Ikona Gear International, Inc. Form 8-K filed 6/8/07, Exhibit 99.3, Agreement and Plan of Merger between Ikona-Nevada and Ikona-Delaware, pp. 3–4.	Upon the Acquisition of Ikona-Nevada by Ikona-Delaware.	Common Stock of Ikona- Nevada to Common Stock of Ikona-Delaware	Upon the Effective Date, each share of Ikona–Nevada Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted automatically into one (1) fully paid and nonassessable, issued and outstanding share of Common Stock, par value \$0.00001 per share, of the Surviving Corporation with the identical rights, privileges, powers, qualifications, limitations, restrictions, duties, and obligations that existed prior to the Merger, as more fully described in the Certificate. After the Effective Date, each holder of an outstanding certificate representing shares of Ikona–Nevada Common Stock may, at such stockholder's option, surrender the same for cancellation to the Surviving Corporation or its transfer agent, and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore representing shares of Ikona–Nevada Common Stock shall be deemed for all purposes to represent the number of shares of the Surviving Corporation's Common Stock into which such shares were converted in the Merger.	5/17/07
Intevac, Inc. Form 8-K filed 7/23/07, Exhibit 2.1, Agreement and Plan of Merger of Intevac Delaware and Intevac California, pp. 3–4.	Upon the Acquisition of Intevac California by Intevac Delaware.	Common Stock of Intevac California to Common Stock of Intevac Delaware	Upon the Effective Time of the Merger, each share of Intevac California Common Stock issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into and exchanged for one (1) fully paid and nonassessable share of Common Stock, \$0.001 par value, of the Surviving Corporation.	2007

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			After the Effective Time of the Merger, each holder of an outstanding certificate representing shares of Intevac California Common Stock may, at such stockholder's option, surrender the same for cancellation to Computershare Trust Company, N.A., as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which the surrendered shares were converted as herein provided. Until so surrendered, each outstanding certificate theretofore representing shares of Intevac California Common Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of Intevac California Common Stock were converted in the Merger.	
Trans-Science Corporation Form DEF 14A filed 10/15/07, p. 41.	Upon the Acquisition of Trans-Science California by China Shuangji Cement, Ltd.	Common Stock of Trans- Science California to Common Stock China Shuangji Cement.	After the Effective Date of the Merger, each holder of an outstanding certificate representing shares of Trans-Science Common Stock may, at such stockholder's option, surrender the same for cancellation to Signature Stock Transfer, Inc., One Preston Park, 2301 Ohio Drive, Suite 100, Plano, TX 75093, as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the Surviving Corporation's Common Stock into which such holders' shares of Trans-Science Common Stock were converted as herein provided. Unless and until so surrendered, each outstanding certificate theretofore representing shares of Trans-Science Common Stock shall be deemed for all purposes to represent the number of whole shares of the Surviving Corporation's Common Stock into which such shares of Trans-Science Common Stock were converted in the Merger.	10/31/07
Eurasia Energy Limited Form 424B4 filed 11/15/07, p. 17.	Upon the Acquisition of Eurasia Nevada by Eurasia Anguilla.	Common Stock of Eurasia Nevada to Common Stock of Eurasia Anguilla	Each share of common stock of Eurasia issued and outstanding prior to the effective date of the conversion other than shares for which appraisal rights are perfected, shall, by virtue of the conversion and without any action by Eurasia or the holders of Eurasia shares remain as one fully paid and non-assessable common share of Eurasia. Each outstanding share certificate representing shares of Eurasia common stock that are not dissenting shares, will be deemed for all purposes to represent the same number of whole shares of Eurasia common stock before the conversion and after the conversion. Holders of Eurasia common stock share certificates are not required to surrender their share certificates.	12/31/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
ROK Entertainment Group, Inc. Form DEF 14C filed 12/10/07, Exhibit 1, Agreement and Plan of Merger, p. 4.	Upon the Acquisition of Cyberfund by ROK Entertainment Group.	Common Stock of Cyberfund to Common Stock of ROK	Each share of common stock, par value \$.001 per share, of Cyberfund issued and outstanding immediately prior to the Effective Date of the Merger other than the shares, if any, of Cyberfund for which appraisal rights shall be perfected under Section 18–1091 of the OGCA (the "Dissenting Shares") shall, by virtue of the Merger and without any action by Cyberfund, the holder of such shares or any other person, be converted into and exchanged for one fully paid and nonassessable share of common stock, par value \$.001 per share, of the Surviving Corporation. Each outstanding certificate theretofore representing shares of Cyberfund common stock that are not Dissenting Shares (the "Non-Dissenting Shares")	12/31/07
			shall be deemed for all purposes to represent the number of whole shares of the ROK common stock into which such Non–Dissenting Shares of Cyberfund common stock were converted in the Merger and the holder thereof shall not be required to surrender such certificate for a certificate issued by ROK. However, after the Effective Date of the Merger, each holder of an outstanding certificate representing Non–Dissenting Shares of Cyberfund common stock may, at such stockholder's option and sole discretion, surrender the same for cancellation to OTC Stock Transfer Co., as the sole stock transfer and registrar of the Cyberfund common stock and as exchange agent therefor (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the number of shares of the ROK common stock into which the surrendered shares were converted as herein provided.	
ProIndia International, Inc. Form 8-K filed 9/17/09, Exhibit 2.1, Agreement and Plan of Merger.	Upon the Acquisition of WE SELL FOR YOU Corp. by ProIndia International.	Common Stock of WSFU to Common Stock of ProIndia	Upon the Effective Date of the Merger, each share of WSFU Common Stock (excluding shares held by shareholders who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Agreement) that is issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into the right to receive one fully paid and nonassessable share of ProIndia Common Stock (the "Merger Consideration").	8/12/09

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
			After the Effective Date of the Merger, each holder of an outstanding certificate representing WSFU Common Stock (excluding holders of certificates who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Agreement) may, at such holder's option, surrender the	
			same for cancellation to such entity as the Surviving Corporation so designates as exchange agent (the "Exchange Agent"), and each such holder shall be entitled to receive in exchange therefor a certificate or certificates representing the Merger Consideration. Until so surrendered, each outstanding certificate theretofore representing WSFU Common Stock shall be deemed for all purposes to represent the Merger Consideration and the	
			associated rights.	
Franklin Electronic Publishers, Inc. Form	Upon the Acquisition of Franklin Electronic	Common and Preferred Stock of Franklin for	At the Effective Time, by virtue of the Merger and without any action on the part of the holder thereof:	2/24/10
DEFA 14A filed 10/1/09, Exhibit 2.1, Agreement and Plan of Merger, pp. 8–9.	Publishers by Saunders Acquisition Corporation.	Common and Preferred Stock of Saunders	(i) each share of Company Common Stock outstanding immediately prior to the Effective Time shall, except as otherwise provided in Section 2.2(a)(vii), be converted into the right to receive an amount in cash equal to the Merger Consideration, payable in cash upon surrender of the certificate that formerly evidenced such share of Company Common Stock (a "Certificate") in the manner provided in Section 2.3;	
			(ii) each outstanding and unexercised option to purchase shares of Company Common Stock (the "Company Options") under any stock option plan of the Company, including, without limitation, the Company's 1998 and 2005 Stock Option Plans or any other similar plan, agreement or arrangement outstanding immediately prior to the Effective Time, shall be cancelled and, in exchange therefore, each former holder of any such Company Option shall be	
			entitled to receive a payment in cash (subject to any applicable withholding of Taxes) of an amount equal to the product of (i) the total number of shares of Company Option which have vested as of the Effective Time, and (ii) the excess, if any, of the Merger Consideration over the exercise price per share previously subject to such Company Option (such amounts payable hereunder being referred to as the "Option Payments"). From and after the Effective Time, any such Company Option shall no longer be exercisable by	
			the holder thereof but shall only entitle such holder to the payment of the Option Payment (iii) each share of common stock, par value \$.01 per share, of Buyer ("Buyer Common Stock") outstanding immediately prior to the Effective Time shall be converted into and become one share of common stock of	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Source	Conversion Trigger	Conversion Type	(iv) each share of Series A Preferred Stock, par value \$0.01 per share, of Buyer ("Buyer Series A Preferred Stock") outstanding immediately prior to the Effective Time shall be converted into and become one share of Series A Preferred Stock of the Surviving Corporation with the same rights, powers and privileges as the share so converted; (v) each share of Series B Preferred Stock, par value \$0.01 per share, of Buyer ("Buyer Series B Preferred Stock,") outstanding immediately prior to the Effective Time shall be converted into and become one share of Series B Preferred Stock of the Surviving Corporation with the same rights, powers and privileges as the share so converted; (vi) each share of Buyer Common Stock, Buyer Series A Preferred Stock and Buyer Series B Preferred Stock converted pursuant to Sections 2.2(a)(iii), 2.2(a)(iv) and 2.2(a)(v), as applicable, shall constitute the only outstanding shares of capital stock of the Surviving Corporation; and (vii) each share of Company Common Stock held by the Company as treasury stock immediately prior to the Effective Time and each of the Rollover Shares shall be canceled, and no payment shall be made with respect thereto; provided, that shares of Company Common Stock held by the Company or its Subsidiaries in trust accounts, managed accounts, investment accounts and the like shall not be cancelled and shall be treated in accordance with Section 2.2(a)(i). From and after the Effective Time, all certificates representing Buyer	Effective Date
			Common Stock, Buyer Series A Preferred Stock or Buyer Series B Preferred Stock, as the case may be, shall be deemed for all purposes to represent only the number of shares of capital stock of the Surviving Corporation into which such shares were converted in accordance with Sections 2.2(a)(iii), 2.2(a)(iv) or 2.2(a)(v), as applicable.	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
American Lorain Corporation Form DEF 14C filed 10/13/09, p. 14, Appendix A, Agreement and Plan of Merger, p. 2.	Upon the Acquisition of American Lorain Delaware by American Lorain Nevada.	Common Stock of American Lorain Delaware to Common Stock of American Lorain Nevada	Upon the consummation of the merger, stock certificates which immediately prior to the merger represented shares of our common stock will be deemed for all purposes to represent the same number of shares of common stock of American Lorain Nevada. Stockholders will not be required to exchange their existing stock certificates for stock certificates of American Lorain Nevada At the Effective Time, as a result of the Merger and without any action on the part of the Company, American Lorain Nevada or the stockholders of the Company: 1. Each share of common stock of the Company, par value \$0.001 per share ("Company Common Stock"), issued and outstanding immediately prior to the Effective Time, shall be converted (without the surrender of stock certificates or any other action) into one fully-paid and non-assessable share of common stock, par value \$0.001 per share, of American Lorain Nevada ("Nevada Common Stock"), with the same rights, powers and privileges as the shares so converted and all shares of Company Common Stock shall be cancelled and retired and shall cease to exist.	11/16/09
Aurum, Inc. Form DEF 14C filed 12/21/09, p. 10.	Upon the Acquisition of Liquid Financial Engines by Aurum.	Common Stock of Liquid Financial Engines to Common Stock of Aurum	Upon the Effective Date of the Merger, each share of LFE Common Stock (excluding shares held by shareholders who perfect their dissenters' rights of appraisal as provided in Section 3.2 of this Agreement) that is issued and outstanding immediately prior thereto shall, by virtue of the Merger and without any action by the Constituent Corporations, the holder of such shares or any other person, be converted into the right to receive one fully paid and nonassessable share of Aurum Common Stock (the "Merger Consideration"). As of the Effective Date of the Merger, all shares of LFE Common Stock shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and each certificate that previously represented such shares of LFE Common Stock shall thereafter represent the Merger Consideration for all such shares.	1/20/10
Castle Brands Inc. Form DEF 14A filed 12/30/09, p. 12.	Upon the Acquisition of Castle Brands Delaware by Castle Brands Florida.	Common Stock of Castle Brands Delaware to Common Stock of Castle Brands Florida	Each share of our common stock issued and outstanding immediately prior to the completion of the merger will, by virtue of the merger, be converted into one share of common stock of Castle Brands Florida. When the merger is completed, stock certificates which immediately prior to the merger represented our common stock will be deemed for all purposes to represent the same number of shares of Castle Brands Florida common stock. Stockholders will not be required to exchange their existing stock certificates for stock certificates of Castle Brands Florida.	2/9/10

Source Conversion Trigger Conversion Type Excerpt Effective Date

Source: SEC Filings; Westlaw Business

Note:

[1] Form 10-KSB filed 4/2/07 lists Georgia as the new state of incorporation, though no specific date of reincorporation could be found.

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Vasogen, Inc. Form 6-K filed 3/1/07, Exhibit 99.1, Notice of 2007 Annual and Special Meeting of Shareholders and Management Proxy Circular, p. 13.	Upon Effective Date of consolidation.	10 Old Shares for 1 New Share	If the proposed consolidation is approved by shareholders and implemented by the Board, registered shareholders will be required to exchange their existing share certificates for new share certificates representing post-consolidation common shares. Following the effective date of the consolidation, registered shareholders will be sent a transmittal letter from the Company's transfer agent as soon as practicable after the effective date of consolidation. The letter of transmittal will contain instructions on how to surrender your certificate(s) representing your pre-consolidation shares to the transfer agent. The transfer agent will forward to each registered shareholder who has sent the required documents a new share certificate representing the number of post-consolidation common shares to which the shareholder is entitled. Until surrendered, each share certificate representing pre-consolidation shares of the Company will be deemed for all purposes to represent the number of whole post-consolidation common shares.	4/17/07
HKN, Inc. Form DEF 14A filed 4/16/07, pp. 17–18.	Upon Effective Date of consolidation.	22.4 Old Shares for 1 New Share	On the Effective Date, without further action of Harken or its stockholders, (i) every twenty–two and four–tenth shares of Common Stock outstanding will automatically be split into one share of outstanding Common stock, (ii) the number of shares of authorized Common Stock will remain fixed at 325,000,000 and (iii) the par value of the Common Stock will remain at \$0.01 per share. As soon as practicable after the Effective Date, the holders of the Common Stock will be notified and requested to surrender to the Exchange Agent any certificate(s) representing outstanding shares of Common Stock in exchange for certificate(s) representing the reduced number of shares of Common Stock that will result from the Reverse Split, together with cash in lieu of any fractional share. On the Effective Date, each certificate representing shares of Common Stock will be deemed for all purposes to represent the reduced number of shares of Common Stock that will result from the Reverse Split, whether or not the certificates representing the outstanding Common Stock are surrendered for exchange. Stockholders should not submit any stock certificates to the Exchange Agent until requested to do so. Persons who hold their shares in brokerage accounts or "street name" will not be required to take any further action to effect the exchange of their shares.	6/6/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
NextPhase Wireless, Inc. Form 8-K filed 10/22/07, Item 3.03, Material Modifications to Rights of Security Holders, p. 2.	Upon Effective Date of consolidation.	20 Old Shares for 1 New Share	On October 2, 2007, the Board of Directors of NextPhase Wireless, Inc. (the "Registrant") approved a one (1)—for—twenty (20) reverse stock split (the "Reverse Split") of the Registrant's Common Stock, par value \$0.001 per share ("Common Stock"), together with a corresponding reduction (from 200,000,000 to 10,000,000) in the number of authorized shares of the Registrant's Common Stock. The Reverse Split was duly approved by the Board of Directors of the Registrant without shareholder approval in accordance with the authority conferred by Section 78.207 of the Nevada Revised Statutes. Pursuant to the Reverse Split, every twenty (20) shares of the Registrant's issued and outstanding Common Stock as presently classified will, as of the close of business on the record date, be reclassified and combined into one (1) whole post–split share of the Registrant's Common Stock. No fractional shares of the Registrant's Common Stock will be issued in connection with the Reverse Split. Shareholders who are entitled to a fractional post–split share will receive in lieu thereof one (1) whole post–split share. In connection with the Reverse Split there is no requirement that shareholders obtain new or replacement stock certificates. The presently issued certificates shall be deemed for all purposes to represent the number of post–split shares that result from the Reverse Split. Each shareholder of record of shares of the Registrant's Common Stock outstanding immediately prior to the Reverse Split may, but shall not be required to, contact the Registrant's Transfer Agent to exchange the certificates originally representing such shareholder's shares of pre–split Common Stock for new certificates representing the number of whole shares of post–split Common Stock into which the shares have been converted.	11/2/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Blue Marble Media Corp. Form DEF 14A filed 10/23/07, p. 11.	Upon Effective Date of consolidation.	10 Old Shares for 1 New Share	Following the issuance of a Certificate of Amendment implementing the Consolidation, a letter of transmittal will be sent by mail to Shareholders advising them that such Certificate of Amendment has been issued and instructing them to surrender the certificates evidencing their Common Shares for replacement certificates representing the number of Common Shares to which they are entitled as a result of the Consolidation. Shareholders will not have to pay a transfer or other fee in connection with the exchange of certificates. Shareholders should not submit certificates for exchange until requested to do so. Until surrendered, each certificate formerly representing Common Shares will be deemed for all purposes to represent the number of Common Shares to which the holder thereof is entitled as a result of the Consolidation.	11/30/07
KeyOn Communications Holdings, Inc. Form 8- K filed 10/29/07, Item 3.03, Material Modification to Rights of Security Holders.	Upon Effective Date of consolidation.	2 Old Shares for 1 New Share	On October 22, 2007, our board of directors approved a 1-for-2 reverse stock split (the "Reverse Split") of our common stock, par value \$0.001 per share the "Common Stock"). The Reverse Split was duly approved by a majority of our stockholders on October 23, 2007. Pursuant to the Reverse Split, every two (2) shares of our issued and outstanding Common Stock as presently classified will be reclassified and combined into one (1) whole post-split share of the Registrant's Common Stock. No fractional shares of the Registrant's Common Stock will be issued in connection with the Reverse Split. Stockholders who are entitled to a fractional post-split share will receive in lieu thereof one (1) whole post-split share. We have requested that the post-split shares begin trading on the OTC Bulletin Board as soon as is reasonably practicable	10/26/07
			In connection with the Reverse Split there is no requirement that stockholders obtain new or replacement stock certificates. The presently issued certificates shall be deemed for all purposes to represent the number of post–split shares that result from the Reverse Split. Each stockholder of record of shares of our Common Stock outstanding immediately prior to the Reverse Split may, but shall not be required to, contact our Transfer Agent to exchange the certificates originally representing such stockholder's shares of pre–split Common Stock for new certificates representing the number of whole shares of post–split Common Stock into which the shares have been converted.	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Glencairn Gold Corporation Form 6-K filed 11/5/07, p. 17.	Upon Effective Date of consolidation.	7 Old Shares for 1 New Share	As soon as practicable after the Share Consolidation has been effected, the Company will send letters of transmittal to holders of Common Shares for use in transmitting their share certificates to the Company's registrar and transfer agent in exchange for new certificates representing the number of common shares to which such shareholders are entitled as a result of the Share Consolidation. No delivery of a new certificate to a shareholder will be made until the shareholder has surrendered his, her or its current issued certificates. Until surrendered, each share certificate representing Common Shares shall be deemed for all purposes to represent the number of new common shares (being one-seventh the number represented by the old share certificate, rounded down to the nearest whole number as described below) to which the holder is entitled as a result of the Share Consolidation.	11/29/07
Global Diversified Industries, Inc. Form 8- K filed 5/20/08, Item 3.03, Material Modification to Rights of Security Holders.	Upon Effective Date of consolidation.	20 Old Shares for 1 New Share	Pursuant to the Reverse Split, every twenty (20) shares of our issued and outstanding Common Stock as presently classified will be reclassified and combined into one (1) whole post–split share of the Registrant's Common Stock. In connection with the Reverse Split there is no requirement that stockholders obtain new or replacement stock certificates. The presently issued certificates shall be deemed for all purposes to represent the number of post–split shares that result from the Reverse Split. Each stockholder of record of shares of our Common Stock outstanding immediately prior to the Reverse Split may, but shall not be required to, contact our Transfer Agent to exchange the certificates originally representing such stockholder's shares of pre–split Common Stock for new certificates representing the number of whole shares of post–split Common Stock into which the shares have been converted.	5/21/08

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Amazon Goldsands, Ltd. Form 8-K filed 6/9/08, Exhibit 99.1, Amazon Goldsands Ltd. Announces Name Ticker Symbol Change to AZNG.	Upon Effective Date of consolidation.	20 Old Shares for 1 New Share	As a result of the reverse stock split, each 20 shares of issued and outstanding common stock as of today's close of trading has been automatically converted into one share of split-adjusted common stock Shareholders are not required to take any action to effect the conversion of their shares. The presently issued certificates shall be deemed for all purposes to represent the number of split-adjusted shares that result from the reverse split. Shareholders of record as of the close of today's trading may, but are not required to, contact Interwest Transfer Co. Inc., Amazon's transfer agent, to exchange the certificates originally representing such shareholder's shares of pre-split common stock for new certificates representing the number of whole shares of post-split common stock into which the shares have been converted.	6/6/08
Elephant Talk Communications, Inc. Form 8-K filed 6/10/08, Item 3.03, Material Modification to Rights of Security Holders, p. 2.	Upon Effective Date of consolidation.	25 Old Shares for 1 New Share	On December 28, 2007, our board of directors approved a 1-for-25 reverse stock split (the "Reverse Split") of our outstanding common stock, no par value per share (the "Common Stock"). The Reverse Split was duly approved by a majority of our stockholders on January 15, 2008. Pursuant to the Reverse Split, every twenty-five (25) shares of our issued and outstanding Common Stock as presently classified were, as of the open of business on June 11, 2008, reclassified and combined into one (1) whole post-split share of our Common Stock In connection with the Reverse Split there is no requirement that shareholders obtain new or replacement stock certificates. The presently issued certificates shall be deemed for all purposes to represent the number of post-split shares that result from the Reverse Split. Each shareholder of record of shares of our Common Stock outstanding immediately prior to the Reverse Split may, but shall not be required to, contact our Transfer Agent to exchange the certificates originally representing such shareholder's shares of pre-split Common Stock for new certificates representing the number of whole shares of post-split Common Stock into which the shares have been converted.	6/11/08

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Westport Innovations, Inc. Form F-10 filed 7/22/08, Exhibit 4.4, Notice of Annual and Special Meeting of Shareholders, p. 28.	Upon Effective Date of consolidation.	3.5 Old Shares for 1 New Share	If the proposed Consolidation is approved by Shareholders and implemented by the Board of Directors, Registered Shareholders will be required to exchange their share certificates representing pre–Consolidation Common Shares for new share certificates representing post–Consolidation Common Shares The letter of transmittal will contain instructions on how to surrender your certificate(s) representing your pre–Consolidation Common Shares to the transfer agent. The transfer agent will forward to each Registered Shareholder who has submitted the required documents a new share certificate representing the number of post–Consolidation Common Shares to which the Shareholder is entitled. Until surrendered, each share certificate representing pre–Consolidation Common Shares will be deemed for all purposes to represent the applicable number of whole post–Consolidation Common Shares.	7/21/08
Master Silicon Carbide Industries, Inc. Form DEF 14C filed 10/20/08, pp. 6, 8.	Upon Effective Date of consolidation.	10 Old Shares for 1 New Share	Pursuant to the Reverse Split, each 10 of the outstanding shares of our Common Stock on the date of the Reverse Split (the "Old Shares") will be automatically converted into 1 share of our Common Stock (the "New Shares"). The Company shall send through its transfer agent to such stockholder a letter of transmittal. The letter of transmittal will contain instructions for the surrender of certificates representing the Old Shares. Upon proper completion and execution of the letter of transmittal and return thereof, together with certificates representing the Old Shares, the stockholder will be entitled to receive a certificate representing the number of the New Shares into which his Old Shares have been reclassified as a result of the Reverse Split. No new certificate will be issued to a stockholder until such stockholder has surrendered his outstanding certificates together with the properly completed and executed letter of transmittal. Until so surrendered, each outstanding certificate representing the Old Shares will be deemed for all corporate purposes after the Effective Date to evidence ownership of the New Shares in the appropriately reduced number.	11/12/08

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date
Kiska Metals Corp. Form 6-K filed 7/7/09, p. 149.	Upon Effective Date of consolidation.	3 Old Shares for 1 New Share	If the Geoinformatics Share Consolidation is approved by the Geoinformatics Shareholders and implemented by the Board, the Registered Geoinformatics Shareholders will be required to exchange their Geoinformatics Share certificates representing pre-consolidation Geoinformatics Shares for new Geoinformatics Share certificates representing post-consolidation Geoinformatics Shares Computershare will forward to each registered Geoinformatics Shareholder who has sent the required documents a new Geoinformatics Share certificate representing the number of post-consolidation Geoinformatics Shares to which the Geoinformatics Shareholder is entitled. Until surrendered, each Geoinformatics Share certificate representing pre-consolidation Geoinformatics Shares will be deemed for all purposes to represent the number of whole post-consolidation Geoinformatics Shares to which the holder is entitled as a result of the Geoinformatics Share Consolidation.	8/5/09
			The Geoinformatics Share Consolidation will become effective on the date shown in the Certificate of Amendment issued pursuant to the YBCA.	
Copernic, Inc. Form 6-K filed 9/11/09, Exhibit 99.2, Notice of Special Shareholders' Meeting to be Held on September 11, 2009, pp. 4–5.	Upon Effective Date of consolidation.	7 Old Shares for 1 New Share	No delivery of a certificate evidencing a post–consolidation common share to a Shareholder shall be made until the Shareholder has surrendered their current issued certificates. Until surrendered, each certificate formerly representing pre–consolidation common shares shall be deemed for all purposes to represent the number of post–consolidation common shares to which the Shareholder is entitled as a result of the Consolidation.	9/14/09

Source: SEC Filings; Westlaw Business

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
IPO Idenix Pharmaceuticals Inc., Form S-1 filed 4/12/02, Exhibit 3.1, Memorandum and Articles of Association, p. 16.	Public offering; Private offering; Election of holders	Preferred to Common Stock of Corporation	Each Preferred Share shall automatically be converted into fully paid Ordinary Shares of the Company immediately upon the consummation of (i) a Qualified IPO or (ii) a Qualified Private Offering. In addition, each Series A Preferred Share, Series B Preferred Share or Series C Preferred Share, as the case may be, shall automatically be converted into fully paid Ordinary Shares of the Company upon the written election of holders of at least two-thirds of Series A Preferred Shares, Series B Preferred Shares or Series C Preferred Shares, respectively. Holders of Preferred Shares so converted may deliver to the Company at its principal office during its usual business hours, the certificate or certificates for the shares so converted. [T]he Company shall issue and deliver to such holder a certificate or certificates for the number of whole Ordinary Shares to which such holder is entitled, together with any cash dividends and payment in lieu of fractional interests to which such holder may be entitled Until such time as a holder of Preferred Shares shall surrender its certificate or certificates therefor as provided above, such certificates shall be deemed to represent the Ordinary Shares to which such holder shall be entitled upon the surrender thereof.	5/8/03
Acadia Pharmaceuticals Inc. Form S-1 filed 2/27/04, Exhibit 3.1, Registrant's Amended and Restated Certificate of Incorporation, pp. 15–16.	Public offering; Vote or written consent of the holders	Preferred to Common Stock of Corporation	Expiry of Preferences of Series A, Series B, Series D, Series E and Series F Preferred Stock. Upon (i) the closing of the sale of shares of Common Stock, at a price of at least \$6.75 per share in a public offering resulting in at least \$25,000,000 of gross proceeds to the Corporation ("Qualified Offering") or (ii) the vote or written consent of the holders of a majority of the issued and outstanding shares voting together as a single class All certificates evidencing shares of Series A, Series B, Series D, Series E and Series F Preferred Stock, from and after the expiry of the preferences of such series, shall be deemed to represent shares of Common Stock for all purposes, notwithstanding the failure of the holder or holders thereof to surrender such certificates on or prior to such date. The Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized shares of such series accordingly.	6/2/04

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Color Kinetics Inc. Form S-1 filed 4/9/04, Exhibit 3.1, Sixth Amended and Restated Certificate of Incoporation, p. 13.	Public offering	Designated Preferred Shares to Common Stock of Corporation	If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock in which (i) the aggregate price paid for such shares by the public shall be at least \$20 million and (ii) the price paid by the public for such shares shall be at least \$6.00 per share then effective upon the closing of the sale of such shares by the Corporation pursuant to such public offering, all outstanding shares of Designated Preferred shall automatically convert to shares of Common Stock [T]he Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled pursuant to subparagraph 6C. Until such time as a holder of shares of Designated Preferred shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.	6/22/04
Coley Pharmaceutical Group, Inc. Form S-1 filed 4/20/05, Exhibit 3.1, Fourth Amended and Restated Certificate of Incorporation, p. 25.	Public offering; Election of holders	Preferred to Common Stock of Corporation	[U]pon the closing of the sale of such shares by the Corporation pursuant to such Qualified Public Offering, all outstanding shares of Preferred Stock shall automatically convert into shares of Common Stock on the basis set forth without further action on the part of the Corporation or the holders of Preferred Stock. 50. Mandatory Conversion Upon Conversion of Series F Preferred Stock. In the event that holders have elected to convert their shares of Series F Preferred Stock to Common Stock then all outstanding shares of Preferred Stock that have not then been converted to Common Stock, shall automatically convert into shares of Common Stock 5P. Mechanics of Mandatory Conversion; Certificates. Upon the occurrence of any event triggering automatic conversion of the Preferred Stockthe Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares to which such holder may be entitled Until such time as a holder of Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.	8/9/05

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Web.com Group, Inc. Form S-1 filed 4/27/05, p. F-21, and Exhibit 3.1, Amended and Restated Certificate of Incorporation, p. 7.	Public offering; Election of holders	Preferred to Common Stock of Corporation	Each share of Series A convertible redeemable preferred stock shall automatically be converted into shares of common stock at the conversion price at the time in effect for such Series A convertible redeemable preferred stock immediately upon the earlier of (i) the Company's sale of its common stock in a firm commitment underwritten public offering (ii) the date specified by written consent or agreement of the holders of a majority of the then outstanding shares of Series A convertible redeemable preferred stock. Effective as of the time of any such automatic conversion, each certificate or certificates representing such automatically converted shares of Series A convertible redeemable preferred stock shall be deemed to represent the shares of common stock into which such shares of Series A convertible redeemable preferred stock automatically converted. Automatic Conversion of Series Preferred Stock. Each share of Series Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Price Effective as of the time of any such automatic conversion, each certificate or certificates representing such automatically converted shares of Series Preferred Stock shall be deemed to represent the shares of Common Stock into which such shares of Series Preferred Stock shall be deemed to represent the shares of Common Stock into which such shares of Series Preferred Stock automatically converted.	11/2/05
Achillion Pharmaceuticals, Inc. Form S-1 filed 3/31/06, Exhibit 3.1, Amended and Restated Certificate of Incorporation of the Registrant, pp. 18–19.	Public offering	Preferred to Common Stock of Corporation	If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock then all outstanding shares of Series A Preferred Stock shall automatically convert to shares of Common Stock If at any time the Corporation shall effect a firm commitment underwritten public offering of shares of Common Stock then all outstanding shares of Series B Preferred Stock shall automatically convert to shares of Common Stock [T]he Corporation shall issue and deliver to such holder a certificate or certificates for the number of whole shares of Common Stock to which such holder is entitled, together with any cash dividends and payment in lieu of fractional shares Until such time as a holder of shares of Preferred Stock shall surrender his or its certificates therefor as provided above, such certificates shall be deemed to represent the shares of Common Stock to which such holder shall be entitled upon the surrender thereof.	10/26/06

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Pharmasset Inc., Form S-1 filed 5/8/06, Exhibit 3.1, Amended and Restated Certificate of Incorporation of the Registrant, p. 11.	Public offering; Sale of the company	Preferred to Common Stock of Corporation	[I]f a conversion of Series A Preferred Shares is to be made in connection with a Qualified IPO or a Sale of the Company, such conversion may, at the election of any holder tendering Series A Preferred Shares for conversion, be conditioned upon the consummation of the Qualified IPO or Sale of the Company, in which case such conversion shall not be deemed to be effective until the consummation of such Qualified IPO or Sale of the Company. Each Series A Preferred Share shall automatically be converted into fully paid Common Shares of the Company Until such time as a holder of Series A Preferred Shares shall surrender its certificate or certificates therefor as provided above, such certificates shall be deemed to represent the Common Shares to which such holder shall be entitled upon the surrender thereof.	5/2/07
Other			onali de critica aport tre darrender tricicos.	
Auriga Laboratories, Inc. DEF 14A filed on 6/6/06, pp. 3, A-2.	Shareholder vote	Preferred to Common Stock of Corporation	Currently, the Company has 37,215,913 shares of common stock issued and outstanding and 1,000,042 shares of Series A preferred stock issued and outstanding. Each preferred share is convertible into 494.956646 shares of common stock (the "Conversion Rate"). Pursuant to the terms of the Certificate of Designations, the shares of preferred stock will immediately and automatically be converted into shares of the Company's common stock (the "Mandatory Conversion") upon the approval and effectiveness of the 1 for 15 reverse stock split described below under Proposal I. At the Effective Time, by virtue of the Merger and without any action on the part of the holders of shares of Multi–Link Common Stock and Series A Convertible Preferred Stock: (a) Each share of Multi–Link Common Stock, no par value per share, of Multi–Link, ("Multi–Link Common Stock "), issued and outstanding immediately prior to the Effective Time (other than any shares of Multi–Link Common Stock held by Merger Co., which shares shall continue to be outstanding,) shall be converted into the right to receive one validly issued, fully paid and nonassessable share of Common Stock, par value \$0.001 per share, of Merger Co. ("Merger Co. Common Stock ");	7/11/06

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
			From and after the Effective Time, subject to Section 2.1, all of the outstanding certificates which immediately prior to the Effective Time represented shares of Multi–Link Common Stock shall be deemed for all purposes to evidence ownership of, and to represent, shares of Merger Co. Common Stock into which the shares of Multi–Link Common Stock formerly represented by such certificates have been converted as provided in this Agreement.	
Forticell BioScience, Inc. Form SB 2/A filed on 12/26/07, p. 49.	Announcement of Product Approval by FDA	Preferred to Common Stock of Corporation	All or a portion of the shares of A Preferred outstanding on the Mandatory Conversion Date ("MCD" and defined below) shall, depending on the closing bid price for our common stock on such MCD, automatically and without any action on the part of the holder, convert into such number of fully paid and nonassessable shares of our common stock[.] MCD is the date we file a report on Form 8–K with the SEC announcing that the FDA has cleared our ORCEL product for commercial sales for treatment of venous stasis ulcers (the "FDA Clearance Date"), provided, that the closing bid price of our common stock exceeds \$1.50 for a period of ten (10) consecutive trading days and provided further that all shares of our common stock issuable upon such mandatory conversion may be offered for sale to the public pursuant to a registration statement then in effect or pursuant to Rule 144(k) under the Securities Act of 1933, as amended.	By 9/30/08 ¹
Vufusion, Inc. Form S-1 filed 7/31/08, Exhibit 3.1, Restated Certificate of Formation as a For-Profit Corporation, p. 4.	Death of Holder or Transfer to non-Permitted Transferee	Preferred to Common Stock of Corporation	Upon the death of the Original Holder or the transfer of shares of Series A Preferred Stock to any person other than a Permitted Transferee, then, without further act on the part of any person, each share of Series A Preferred Stock issued and outstanding (in the case of the Original Holder's death) or each share of Series A Preferred Stock transferred to a person other than a Permitted Transferee (in the case of such a transfer) shall be converted to Common Stock as defined in Section 5(a) hereof. Upon any such conversion, stock certificates formerly representing outstanding shares of Series A Preferred Stock shall thereupon and thereafter be deemed to represent a like number of shares of Common Stock, and any outstanding right to receive Series A Preferred Stock shall automatically become the right to receive a like number of shares of Common Stock.	Unknown ²

Source: SEC Filings; Westlaw Business

Note

^[1] According to the company's most recently filed 10-Q on November 17, 2008, 50.289 Series A Preferred Shares were converted to common stock in the nine months ended September 30, 2008.

^[2] Conversions of the company's Series A Preferred Stock is specific to each share and holder and are not reported in any of the company's filings.

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Axion International Holdings Form 8-K filed 3/22/02, Exhibit 4.2, Form of Senior Secured Convertible Promissory Note due April, 2005, pp. 8–9.	3 years from date of Issuance.	Debt to Common Stock of Corporation	Section 3.5 Mandatory Conversion. (a) On the Mandatory Conversion Date (as defined below), this Note shall, automatically and without any action on the part of the holder hereof, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the principal amount of this Note outstanding on the Mandatory Conversion Date divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date. (c) On the Mandatory Conversion Date, the outstanding principal balance of this Note plus all accrued and unpaid interest shall be converted automatically without any further action by the holder of this Note and whether or not this Note is surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon conversion of this Note unless this Note is either delivered to the Company or the holder notifies the Company this Note has been lost, stolen, or destroyed, and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith[.]	10/29/03
Glowpoint Inc. Form 8- K filed 12/23/02, Exhibit 4.1, Subordinated Convertible Promissory Note, pp. 2–3.	Any date after the effective date of the Registration Statement, provided, that the closing of the Common Stock exceeds \$4.80 for a period of 10 consecutive trading days.	Debt to Common Stock of Corporation	(c) On the Mandatory Conversion Date (as defined below), the principal amount of this Note plus all accrued and unpaid interest shall automatically and without any action on the part of the Payee, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the principal amount of the Note plus all accrued and unpaid interest outstanding on the Mandatory Conversion Date divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date. As used herein, a "Mandatory Conversion Date" shall be any date after the effective date of the Registration Statement (as defined in the Registration Rights Agreement), provided, that the closing price of the Common Stock exceeds \$4.80 for a period of ten (10) consecutive trading days and the Registration Statement is effective[.]	1/22/04

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Satcon Technology Corp Form 8-K filed 2/19/03, Exhibit 10.7, Secured Convertible Promissory Note due 2006, p. 6.	At least 90 days following the Effectiveness Date that (i) the Closing Bid and Ask Price of the Common Stock exceeds \$2.50 for 20 consecutive Trading Days; and (ii) that the Registration Statement is effective or the shares of Common Stock may be offered .	Debt to Common Stock of Corporation	(b) On the Mandatory Conversion Date (as defined below), the principal amount of this Note plus all accrued and unpaid interest shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the principal amount of the Note plus all accrued and unpaid interest outstanding on the Mandatory Conversion Date divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date. As used herein, a "MANDATORY CONVERSION DATE" shall be the first date which is at least ninety (90) days following the Effectiveness Date, that (i) the Closing Bid and Ask Price (as defined in Section 3.2(d) hereof) of the Common Stock exceeds \$2.50 for a period of twenty (20) consecutive Trading Days; and (ii) that the Registration Statement is effective or the shares of Common Stock into which this Note can be converted may be offered for sale to the public pursuant to Rule 144(k) under the Securities Act.	October 2003
V one Corp/De Form 10-K filed on 3/26/04, Exhibit 10.99, Subordinated Convertible Promissory Note due February 27, 2009, pp. 5–6.	The earlier of (A) the date that is 5 years from the Issuance Date and (B) the first date which is at least 180 days following the effective date of the registration statement.	Debt to Common Stock of Corporation	(b) On the Mandatory Conversion Date (as defined below), the principal amount of this Note plus all accrued and unpaid interest shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) the principal amount of this Note plus all accrued and unpaid interest outstanding on the Mandatory Conversion Date divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date. As used herein, the "MANDATORY CONVERSION DATE" shall be the earlier of (A) the date that is five (5) years from the Issuance Date and (B) the first date which is at least one hundred eighty (180) days following the effective date of the registration statement providing for the resale of the shares of Common Stock issuable upon conversion of this Note and the Other Notes, that the Closing Bid Price (as defined in Section 3.2(d) hereof) of the Common Stock exceeds \$1.00 for a period of twenty (20) consecutive Trading Days (so long as the first Trading Day of such twenty (20) consecutive Trading Day period commences following the one hundred eightieth (180th) day following the effective date of such registration statement); provided, however, that the Registration Statement is effective and has been effective, without lapse or suspension, for a period of 60 consecutive calendar days prior to the Mandatory Conversion Date, or the shares of Common Stock into which this Note can be converted may be offered for sale to the public pursuant to Rule 144(k) under the Securities Act[.]	Unknown ¹

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Lithium Technology Corp. Form 10QSB filed on 11/24/04, Exhibit 10.79, Form of Convertible Note Issuable in Lieu of Series B Preferred Stock, p. 3.	3 years from date of Issuance.	Debt to Common Stock of Corporation	F. Mandatory Conversion. 1. If this Note is outstanding in whole or in part on the Mandatory Conversion Date it shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) \$1,000 divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date.	Unknown ²
			On the Mandatory Conversion Date, any amounts outstanding under this Note shall be converted automatically without any further action by the Holder and whether or not this Note surrendered to the Company or its Transfer Agent; provided, however, that the Company shall not be obligated to issue the shares of Common Stock issuable upon conversion of this Note unless this Note is either delivered to the Company or the Holder notifies the Company that such Note has been lost, stolen, or destroyed, and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Upon the occurrence of the automatic conversion of this Note pursuant to this Section, the Holder shall surrender this Note to the Company and the Company shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section I C.2.) to the Holder within three (3) business days of the Holder's delivery of this Note.	
Lithium Technology Corp. Form 10QSB filed on 6/1/05, Exhibit 10.79, Form of 8% Convertible Notes, p. 3.	3 years from date of Issuance.	Debt to Common Stock of Corporation	C. Mandatory Conversion. 1. If this Note is outstanding in whole or in part on the Mandatory Conversion Date it shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) \$1,000 divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date	By 9/30/05 ³

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
			3. On the Mandatory Conversion Date, any amounts outstanding under this Note shall be converted automatically without any further action by the Holder and whether or not this Note surrendered to the Company or its Transfer Agent; provided, however, that the Company shall not be obligated to issue the shares of Common Stock issuable upon conversion of this Note unless this Note is either delivered to the Company or the Holder notifies the Company that such Note has been lost, stolen, or destroyed, and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Upon the occurrence of the automatic conversion of this Note pursuant to this Section, the Holder shall surrender this Note to the Company and the Company shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section I C.2.) to the Holder within three (3) business days of the Holder's delivery of this Note.	
Healthrenu Medical Inc., Form 8-K filed on 9/9/05, Exhibit 10.1, Unsecured Convertible Note, p. 3.	3 years from date of Issuance.	Debt to Common Stock of Corporation	C. Mandatory Conversion. 1. If this Note is outstanding in whole or in part on the Mandatory Conversion Date it shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) \$1,000 divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date	April 2007
			3. On the Mandatory Conversion Date, any amounts outstanding under this Note shall be converted automatically without any further action by the Holder and whether or not this Note surrendered to the Company or its Transfer Agent; provided, however, that the Company shall not be obligated to issue the shares of Common Stock issuable upon conversion of this Note unless this Note is either delivered to the Company or the Holder notifies the Company that such Note has been lost, stolen, or destroyed, and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Upon the occurrence of the automatic conversion of this Note pursuant to this Section, the Holder shall surrender this Note to the Company and the Company shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section I C.2.) to the Holder within three (3) business	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Healthrenu Medical Inc., Form 8-K filed on 2/16/06, Exhibit 10.1, Secured Convertible Note, p. 3.	3 years from date of Issuance.	Debt to Common Stock of Corporation	C. Mandatory Conversion. 1. If this Note is outstanding in whole or in part on the Mandatory Conversion Date it shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) \$1,000 divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date.	April 2007
			3. On the Mandatory Conversion Date, any amounts outstanding under this Note shall be converted automatically without any further action by the Holder and whether or not this Note surrendered to the Company or its Transfer Agent; provided, however, that the Company shall not be obligated to issue the shares of Common Stock issuable upon conversion of this Note unless this Note is either delivered to the Company or the Holder notifies the Company that such Note has been lost, stolen, or destroyed, and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection therewith. Upon the occurrence of the automatic conversion of this Note pursuant to this Section, the Holder shall surrender this Note to the Company and the Company shall cause its Transfer Agent to deliver the shares of Common Stock issuable upon such conversion (in the same manner set forth in Section I C.2.) to the Holder within three (3) business days of the Holder's delivery of this Note.	
Monotype Imaging Holdings, Inc. Form S- 1 filed 1/26/07, Exhibit 10.58, Subordinated Convertible Promissory Note of Monotype Holdings, Inc, p. 3.	Earliest to occur: (a) exercise of the Drag Along Right (b) an Initial Public Offering.	Debt to Common Stock of Corporation	2.2 Automatic Conversion. Notwithstanding anything in this Section 2 to the contrary, this Note, and the entire outstanding balance, including principal and interest, due at any time under this Note, shall automatically convert into Conversion Stock at the Conversion Price (such conversion, an "Automatic Conversion") upon the earliest to occur of (a) exercise of the Drag Along Right (as defined in the Restricted Stock Agreement) by the Majority Shareholders (as defined in the Restricted Stock Agreement) pursuant to Section 5 of the Restricted Stock Agreement upon a Sale (as such term is defined in the Restricted Stock Agreement) or (b) an Initial Public Offering (as such term is defined in the Plan);	7/30/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
			provided, however, that if (i) Vested Shares (as provided, however, that if (i) Vested Shares (as defined in the Restricted Stock Agreement) into which this Note is convertible pursuant to Section 2.2(a) have a Fair Market Value (as defined in the Restricted Stock Agreement) of less then \$285,000, or (ii) if the per share purchase price paid by the Buyer (as defined in the Restricted Stock Agreement) to the Holder under Section 5 of the Restricted Stock Agreement is less than the Conversion Price, then no such Automatic Conversion shall occur[.]	
Narrowstep, Inc. Form 8-K filed 3/6/07, Exhibit 10.3, 12% Mandatorily Convertible Note, pp. 4–5.	Mandatory Conversion Event.	Debt to Common Stock of Corporation	4. AUTOMATIC CONVERSION. (a) Neither this Note nor any portion of this Note shall be convertible at any time unless and until a Mandatory Conversion Event shall have occurred. Upon the occurrence of a Mandatory Conversion Event, all of the principal amount of this Note and any accrued and unpaid interest due hereon shall automatically and without any action on the part of the Holder convert on a dollar-for-dollar basis, less a discount of 10%, into Conversion Securities. If the Mandatory Conversion Event is the closing of a Company Sale, for purposes of applying the discount, the Common Stock shall be valued at the per share consideration paid for shares of Common Stock in the Company Sale.	Unknown⁴
			[T]he conversion shall be deemed to have been effected, as of the close of business on the Mandatory Conversion Date, and at such time, the rights of the Holder shall cease with respect to this Note, and the Person or Persons in whose name or names any Conversion Securities shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of such Conversion Securities.	

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Wits Basin Precious Minerals, Inc. Form 8- K filed on 6/25/07, Exhibit 10.2, Convertible Promissory Note, p. 4.	Upon merger with EasyKnit Enterprises.	Debt to Common Stock of Corporation	7.3 Automatic Conversion. All unpaid Principal and accrued and unpaid interest on this Note shall be automatically converted (an "Automatic Conversion"), effective immediately prior to the effective date of Issuer's proposed merger transaction with Easyknit Enterprises Holdings Limited (the "Merger"), into the number of shares of Common Stock computed by dividing such outstanding amount by the then current Conversion Price. [T]he Automatic Conversion of this Note shall be deemed to have been made immediately prior to the effective time of the Merger, and the person or persons entitled to receive Common Stock upon such conversion shall be treated for all purposes as the record holder(s) of such Common Stock as of such date.	Unknown ⁵
Glowpoint, Inc. Form 8-K filed 9/24/07, Exhibit 4.3, Glowpoint, Inc. Senior Secured Convertible Promissory Note due March 31, 2009, p. 6.	First date that closing bid price of common stock exceeds \$1.25 for 20 consecutive trading days.	Debt to Common Stock of Corporation	(b) Mandatory Conversion. On the Mandatory Conversion Date (as defined below), this Note shall automatically and without any action on the part of the Holder, convert into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing (x) that portion of the outstanding principal balance plus any accrued but unpaid interest under this Note as of the Mandatory Conversion Date by (y) the Conversion Price then in effect on the Mandatory Conversion Date, provided, however, that the Conversion Price shall be subject to adjustment as described in Section 3.6 below. As used herein, "Mandatory Conversion Date" shall be the first date that the Closing Bid Price (as defined below) of the Common Stock exceeds \$1.25 (as adjusted for stock splits, stock dividends, combinations and similar transactions) for twenty (20) consecutive trading days. The Mandatory Conversion Date and the Voluntary Conversion Date collectively are referred to in this Note as the "Conversion Date". Notwithstanding the foregoing to the contrary, the Note shall automatically convert pursuant to this Section 3.1(b) only if (1) the Registration Statement is effective and has been effective, without lapse or suspension of any kind, for such twenty (20) consecutive trading day period, (2) trading in the Common Stock shall not have been suspended by the Securities and Exchange Commission or the OTC Bulletin Board (or other exchange or market on which the Common Stock is trading), and (3) the Maker is in material compliance with the terms and conditions of this Note and the other Transaction Documents[.]	Unknown ⁶

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Performance Health Technologies, Inc. Form 10SB12 G/A filed on 9/27/07, Exhibit 10.99, Subscription Agreement, p. 28.	Mandatory Conversion Date.	Debt to Common Stock of Corporation	B. Mandatory Conversion. 1. If this Note is outstanding in whole or in part on the Mandatory Conversion Date it shall automatically and without any action on the part of the Holder, convert into a number of fully paid and nonassessable shares of Common Stock equal to the quotient of (i) \$1,000 divided by (ii) the Conversion Price in effect on the Mandatory Conversion Date. 3. On the Mandatory Conversion Date, any amounts outstanding under this Note shall be converted automatically without any further action by the Holder and whether or not this Note surrendered to the Borrower; provided, however, that the Borrower shall not be obligated to issue the shares of Common Stock issuable upon conversion of this Note unless this Note is either delivered to the Borrower or the Holder notifies the Borrower that such Note has been lost, stolen, or destroyed, and executes an agreement satisfactory to the Borrower to indemnify the Borrower from any loss incurred by it in connection therewith[.]	By 9/30/08 ⁷
Guided Therapeutics Inc. 10QSB filed on 10/23/07, Exhibit 10.2, Amended and Restated Loan Agreement, pp. 7–8.	At least 30 days after the Company has notified Noteholder of the Company's decision to convert .	Debt to Common Stock of Corporation	(b)Any Noteholder may, at any time after the initial filing of the Registration Statement as set forth in Section 5.17(a) below, convert a portion or the entirety of his or its outstanding Convertible Notes. Before any Noteholder shall be entitled to convert its Convertible Note into Common Stock the Noteholder shall surrender the Convertible Note endorsed for transfer to the Company or its designated transfer agent and shall give written notice of its election to convert, including the name or names in which the Common Stock certificates are to be issued. The Company shall as soon as practicable thereafter issue and deliver to such Noteholder or the designated Persons a certificate or certificates for the number of shares of Common Stock into which the Convertible Note or percentage thereof is being converted and if applicable,	2/26/10

Source Conversion Trigger Conversion Type Excerpt Effective Date(s)

a new Convertible Note for the unconverted principal and unpaid interest; however, the conversion shall be deemed to have occurred and the Person(s) designated to receive the Common Stock shall be a record holder(s) thereof on the date of surrender by the Noteholder with appropriate instructions. In the event of an automatic conversion, the Company shall provide to each Noteholder instructions for the surrender of its Convertible Note for conversion into Common Stock and for designation of Persons to receive Common Stock. The conversion shall be deemed to have been made and the Person(s) to receive the Common Stock shall be a record holder(s) thereof on the date designated by the Company for the automatic conversion if the Convertible Note has been appropriately surrendered for conversion or such later date as it is so surrendered.

....

2.3Conversion of Convertible Notes.

(a) (i)The outstanding principal of, and the accrued and unpaid interest on, each Convertible Note shall be converted at any time at the election of the Noteholder into that number of shares of Common Stock of the Company as equals the amount being converted divided by \$0.65 (as adjusted and provided herein below, the "Conversion Price").
(ii)The Convertible Notes shall automatically be converted into Common Stock of the Company at the Conversion Price applicable on the conversion date at the election of the Company on a date at least thirty days after the Company has given notice to each Noteholder of the Company's decision to convert; however, the Company may not make any election to convert all or a portion of the Convertible Notes unless the following has occurred: the Average Trading Price for a period of at least thirty (30) consecutive trading days immediately prior to the Company sending the notice of conversion is equal to or greater than two times the initial Conversion Price.

(iii)Upon the closing by the Company of the issuance and sale of New Qualified Securities, each Convertible Note shall automatically be exchanged for New Qualified Securities[.]

Nephros Inc. Form Def Automatic Conversion Date. 14C on 10/24/07, Exhibit D, p. 2. Debt to Common Stock of Corporation (a) Conversion. On the Automatic Conversion Date, this Note and all accrued but unpaid interest thereon shall immediately, and without any action on the part of the Company or the Holder, convert into (i) shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), at a conversion price per share of Common Stock equal to \$0.706 (the "Conversion Price"), and (ii) Class D Warrants (the	Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
equal to 50% of the number of shares of Common Stock issued to the Holder in accordance with clause (i) in this Section 3(a) (rounded up to the nearest whole share and subject to adjustment as provided in Section 3(c) below) at an exercise price per share of Common Stock, subject to adjustment as provided in Section 3(c) below, equal to \$0.90 per share (the "Exercise Price"), such Warrants to have the terms and conditions set forth in the form of Warrant attached hereto as Exhibit A. This Note may not be converted by the Holder at any time. (iv) Such conversion shall be deemed to have been made as of the Automatic Conversion Date, and the person or persons entitled to receive the Common Stock and Warrants deliverable upon conversion of such Note shall be treated for all purposes as the record holder or holders of such Common Stock and Warrants on such date and the Note shall no longer be deemed outstanding and all rights whatsoever in respect thereof (including the right to receive interest thereon) shall terminate except the right to receive interest thereon) shall terminate except the right to receive holders of full shares of Common Stock and Warrants to which such person shall be entitled upon conversion hereof, provided, however, that the Company shall not be required to issue any certificates representing shares of Common Stock and Warrants (x) until such Note has been received at the place designated in the Automatic Conversion Notice[.]	14C on 10/24/07,	Automatic Conversion Date.		accrued but unpaid interest thereon shall immediately, and without any action on the part of the Company or the Holder, convert into (i) shares of the Company's common stock, par value \$0.001 per share (the "Common Stock"), at a conversion price per share of Common Stock equal to \$0.706 (the "Conversion Price"), and (ii) Class D Warrants (the "Warrants") for the purchase of shares of Common Stock in an amount equal to 50% of the number of shares of Common Stock issued to the Holder in accordance with clause (i) in this Section 3(a) (rounded up to the nearest whole share and subject to adjustment as provided in Section 3(c) below) at an exercise price per share of Common Stock, subject to adjustment as provided in Section 3(c) below, equal to \$0.90 per share (the "Exercise Price"), such Warrants to have the terms and conditions set forth in the form of Warrant attached hereto as Exhibit A. This Note may not be converted by the Holder at any time. (iv) Such conversion shall be deemed to have been made as of the Automatic Conversion Date, and the person or persons entitled to receive the Common Stock and Warrants deliverable upon conversion of such Note shall be treated for all purposes as the record holder or holders of such Common Stock and Warrants on such date and the Note shall no longer be deemed outstanding and all rights whatsoever in respect thereof (including the right to receive interest thereon) shall terminate except the right to receive the number of full shares of Common Stock and Warrants to which such person shall be entitled upon conversion hereof; provided, however, that the Company shall not be required to issue any certificates representing shares of Common Stock and Warrants (x) until such Note has been received at the place designated in	11/14/07

Source	Conversion Trigger	Conversion Type	Excerpt	Effective Date(s)
Flo Corp. Form 8-K filed on 5/14/08, Exhibit 4.1, Form of 12% Senior Convertible Note, pp. 4–5.	First date that the Closing Bid Price of the Common Stock has exceeded \$3.00 20 consecutive trading days.	Debt to Common Stock of Corporation	(b) Mandatory Conversion. On the Mandatory Conversion Date (as defined below), this Note shall automatically and without any action on the part of the Holder, convert into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing (x) that portion of the outstanding principal balance plus any accrued but unpaid interest under this Note as of the Mandatory Conversion Date by (y) the Conversion Price then in effect on the Mandatory Conversion Date, provided, however, that the Conversion Price shall be subject to adjustment as described in Section 3.6 below. As used herein, "Mandatory Conversion Date" shall be the first date on or after, 2008 that the Closing Bid Price (as defined below) of the Common Stock has exceeded \$3.00 (as adjusted for stock splits, stock dividends, combinations and similar transactions) for twenty (20) consecutive trading days[.]	Unknown ⁸

Source: SEC Filings; Westlaw Business

Note:

- [1] Company filed for Bankruptcy on 3/11/05.
- [2] As of the Company's Form 10-QSB filed on November 24, 2004, the notes had been issued but had not yet been converted.
- [3] According to the Company's Form 10-QSB filed on November 14, 2005, conversion of the notes had taken place in the nine months ended September 30, 2005.
- [4] As of the Company's Form 10-KSB filed on June 16, 2008, the notes had been issued but had not yet been converted. The Company has not filed 10-K/Qs since January 14, 2009.
- [5] As of the Company's Form 10-KSB filed on April 4, 2008, the notes had been issued with a maturity date of September 17, 2007, but had not yet been converted.
- [6] As of the Company's Form 10-K filed on March 31, 2010, the notes had been issued but had not yet been converted. Additionally, the notes had their maturity date extended from March 31, 2009 to September 30, 2010, resulting in an extinguishment of debt.
- [7] According to the Company's Form 10-Q filed on November 19, 2008, \$333,700 of the notes had matured (and converted) during the third quarter 2008.
- [8] As of the Company's Form 10-Q filed on August 22, 2008, the notes had been issued but had not yet been converted. The company has not filed 10-K/Qs since August 22, 2008.

Exhibits 6A through 6G

Exhibits filed under seal as required by the Order of the Court dated September 9, 2010 [Bankruptcy Case No. 08-12229 (MFW) Docket No. 5407]

Exhibits 7A through 7C

Exhibits filed under seal as required by the Order of the Court dated September 9, 2010 [Bankruptcy Case No. 08-12229 (MFW) Docket No. 5407]