

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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

**CERTIFICATION OF COUNSEL REGARDING ORDER GOVERNING THE
PRODUCTION AND USE OF CONFIDENTIAL**

The undersigned counsel for Aurelius Capital Management, LP, on behalf of the funds it manages or advises, Owl Creek Asset Management, L.P., on behalf of the funds it manages or advises, Appaloosa Management L.P., on behalf of the funds it manages or advises, and Centerbridge Partners, L.P., on behalf of the funds it manages or advises (the "Settlement Note Holders") hereby certifies and states as follows:

1. The Order (the "Proposed Order") Governing the Production and Use of Confidential Material is attached hereto as Exhibit 1. The Proposed Order requests approval of the Confidentiality Agreement Governing the Production and Use of Confidential Material (the "Agreement").

2. The Agreement represents an agreement by and among the Settlement Note Holders, the Debtors,² the Creditors' Committee, and the Equity Committee regarding the treatment of certain confidential material during the course of discovery in the above-captioned cases.

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

² Capitalized terms not herein defined shall have the meanings ascribed to such terms in the Agreement.



WHEREFORE, the Settlement Note Holders respectfully request that the Court enter the Proposed Order approving the Agreement.

Dated: February 28, 2011

BLANK ROME LLP

/s/ Victoria Guilfoyle

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Attorneys for the Settlement Note Holders

EXHIBIT 1

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

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<i>In re</i>	:	Chapter 11
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	:	
Debtors.	:	(Jointly Administered)
	:	
-----	X	

**ORDER GOVERNING THE PRODUCTION AND USE OF
CONFIDENTIAL MATERIAL**

Upon consideration of the Confidentiality Agreement Governing the Production and Use of Confidential Material (the "Agreement")² between the Settlement Note Holders, the Debtors, the Creditors' Committee, and the Equity Committee, and it appearing that discovery or information requested or provided in connection with the above-referenced cases may involve the production of information considered sensitive, confidential, personal, proprietary, and/or protected by statutory or other legal privileges; and after due deliberation thereon and good sufficient cause appearing therefore it is hereby:

ORDERED that the Agreement attached as Exhibit A is hereby approved; and it is further

ORDERED that pursuant to Fed. R. Evid. 502(d), any attorney-client privilege, work product protection or other immunity or protection from disclosure applicable to any material that has been or shall be disclosed inadvertently or otherwise in accordance with the terms of the

¹ The Debtors in these chapter 11 cases along with the last four digits of each Debtor's federal tax identification number are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395). The Debtors' principal offices are located at 925 Fourth Avenue, Seattle, Washington 98104.

² Capitalized term not defined herein shall have the meaning ascribed to them in the Agreement.

Agreement shall not be deemed to be waived (in this or any federal or state proceeding) by virtue of such disclosure; and it is further

ORDERED that pursuant to Del. Bankr. L.R. 9018-1(c), the Parties are authorized to file confidential materials under seal without filing a separate motion to that effect; and it is further

ORDERED that this Court shall retain jurisdiction over all matters arising from or related to the interpretation or implementation of this Order.

Dated: February __, 2011
Wilmington, Delaware

The Honorable Mary F. Walrath
United States Bankruptcy Court Judge

EXHIBIT A

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

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<i>In re</i>	:	Chapter 11
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WASHINGTON MUTUAL, INC., <u>et al.</u> ³	:	Case No. 08-12229 (MFW)
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Debtors.	:	(Jointly Administered)
	:	
-----	X	

**CONFIDENTIALITY AGREEMENT GOVERNING THE PRODUCTION AND USE OF
CONFIDENTIAL MATERIAL**

WHEREAS the Court granted, in part, the motion (“Motion”) filed by the Official Committee of Equity Security Holders of Washington Mutual, Inc. (the “Equity Committee”) seeking discovery pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004-1 from Aurelius Capital Management, LP, on behalf of the funds it manages or advises, Owl Creek Asset Management, L.P., on behalf of the funds it manages or advises, Appaloosa Management L.P., on behalf of the funds it manages or advises, and Centerbridge Partners, L.P., on behalf of the funds it manages or advises (individually, “Settlement Note Holder Party,” collectively, the “Settlement Note Holder Parties”);

WHEREAS the Settlement Note Holder Parties will produce discovery material in response to the Motion, as limited by the Court during its hearing on February 8, 2011, and as ordered by the Court in its February 11, 2011 Order (the “Permitted Discovery”);

WHEREAS the Permitted Discovery may require the production of information that is sensitive, confidential, highly confidential, personal, proprietary, and/or protected by statutory or other legal privileges.

³ The Debtors in these Chapter 11 cases and the last four digits of each Debtor’s federal tax identification numbers are: (i) Washington Mutual, Inc. (3725); and (ii) WMI Investment Corp. (5395).

WHEREAS the Settlement Note Holder Parties and the Equity Committee are entering into this agreement (the “Agreement”) along with the Official Committee of Unsecured Creditors (the “Creditors’ Committee”) and the Debtors (individually a “Party,” collectively, the “Parties”) to govern the production, exchange, and use of all Discovery Materials.

NOW, THEREFORE, the Parties agree as follows:

1. Definitions:

a. “Document” shall have the broadest meaning accorded to the phrase “documents or electronically stored information” as used in Rule 34 of the Federal Rules of Civil Procedure, including all tangible written, recorded or graphic material, and intangible data files, such as magnetic computer files, whether produced or created by the Settlement Note Holder Parties, or another person, and whether produced pursuant to any state or federal discovery rules, by agreement or otherwise, and includes, without limitation, documents, interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, trial transcripts or other court transcripts, pleadings, motions, affidavits, declarations, affirmations, briefs, or other filings, and any portion of any of the above, produced pursuant to this Agreement.

b. “Discovery Material” means all Documents and other information produced pursuant to the Permitted Discovery and pursuant to this Agreement.

c. “Final Order” means that: (a) no timely appeal has been taken from the Order at issue, or if a timely appeal has been taken it has been dismissed with prejudice or otherwise finally resolved; and (b) no timely motion for reconsideration of the Order at issue is pending before the Bankruptcy Court, or if a timely reconsideration motion has been filed it has been dismissed with prejudice or otherwise finally resolved.

d. “Producing Party” means any Party that produces Discovery Material pursuant to this Agreement.

e. “Receiving Party” means any Party that receives any Discovery Material pursuant to this Agreement, including any Person who is given access to Discovery Material

under paragraphs 4 and 5 hereto other than any Court personnel, mediators, or arbitrators described in paragraphs 4 and 5.

f. “Person” shall be broadly interpreted to include, without limitation, any corporation, company, partnership, individual or other entity.

g. “Confidential Information” means all Discovery Material or other information that is produced by any Party to this Agreement pursuant to this Agreement that is confidential, proprietary or otherwise not generally of the sort that is made available to the public. Likewise, all derivations, summaries and analyses of Confidential Information prepared by or on the behalf of any of the Parties shall be “Confidential Information”; provided, however, that conclusions, recommendations and positions asserted by, or on behalf of, the Parties shall not be deemed “Confidential Information” if such conclusions, recommendations or positions do not include or set forth Confidential Information. The following will not constitute Confidential Information: (i) information that is generally available to the public other than as a result of a violation of this Agreement by any of the Parties or their representatives; provided, however, that any such information obtained through discovery that is subject to a confidentiality agreement or other restrictions will remain subject to such agreement or restrictions, (ii) information that becomes available to the Parties on a nonconfidential basis from a source other than the Settlement Note Holder Parties without knowledge that it is subject to any confidentiality restrictions, or (iii) information independently developed by the Parties without the use of Confidential Information.

h. “Highly Confidential—Attorneys’ Eyes Only Information” means information that constitutes: (i) any trade secret; or (ii) highly proprietary or sensitive business information the disclosure of which would be detrimental to that Party’s business. Likewise, all derivations, summaries and analyses of Highly Confidential—Attorneys’ Eyes Only Information prepared by or on the behalf of any of the Parties shall be Highly Confidential—Attorneys’ Eyes Only Information; provided, however, that conclusions, recommendations and positions asserted

by, or on behalf of, the Parties shall not be deemed Highly Confidential—Attorneys’ Eyes Only if such conclusions, recommendations or positions do not include or set forth Highly Confidential—Attorneys’ Eyes Only Information. **All protections applicable under this Agreement to Confidential Information apply as well to Highly Confidential — Attorneys’ Eyes Only Information.**

2. Permissible Use of Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information.

a. Any person or Party that is permitted to have access to Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information pursuant to this Agreement shall take all necessary steps, as described in this Agreement, to avoid disclosure of the Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information.

b. Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information may be disclosed only to those persons identified in paragraphs 4 and 5 below. Any person thus obtaining access to Confidential Information and/or Highly Confidential—Attorneys’ Eyes Only Information through Permitted Discovery shall use that information **solely** in connection with (i) confirmation of the Modified Sixth Amended Joint Plan of Affiliated Debtors Pursuant To Chapter 11 Of The United States Bankruptcy Code filed by the Debtors on February 8, 2011 (the “Plan”) or any amendments thereto (the “Confirmation Matter”); (ii) any challenge or objection to allowance of any claim or interest, or any portion thereof, held or asserted by any Settlement Note Holder Party (an “Objection”); or (iii) any appeal taken from an Order respecting (i) or (ii). No Person or Party is permitted to use any Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information for any other purpose, including, but not limited to, the furtherance of that person’s business interests or in any administrative or other judicial proceeding, including within the Debtors’ chapter 11 bankruptcy cases, other than as specified herein. Highly Confidential—Attorneys’ Eyes Only Information may not be disclosed in any plan or disclosure statement. If any person violates or threatens to violate any of the terms

hereof, the aggrieved party may seek any appropriate relief from this or any other Court, including injunctive relief and sanctions.

c. Any papers that are filed with the Court that contain or refer to Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information must be filed under seal.

d. No person or Party that receives Discovery Material pursuant to this Agreement shall disclose any Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information to any person or party not listed in paragraphs 4 or 5 except as explicitly provided for in this Agreement or with the prior written consent of the Producing Party.

e. Notwithstanding any other provisions in this Agreement, no Producing Party shall be prohibited from disclosing and/or using its own confidential information as it deems appropriate.

3. Designation of Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information.

a. Any Party that produces Discovery Material pursuant to this Agreement may designate documents or information as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information by placing on or affixing to a document containing such information (in such manner as will not interfere with the legibility thereof) the caption **“CONFIDENTIAL INFORMATION”** or **“HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY INFORMATION”** (“Caption”). While the Producing Parties should endeavor to place a Caption on each page any document or material so designated, failure to do so does not alter the confidentiality designation of the documents. To the extent that information that is stored or recorded in the form of electronic media is produced by any Party in a native or other form such that it cannot be stamped with the appropriate Caption, the Producing Party may designate such matter **“CONFIDENTIAL INFORMATION”** or **“HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY INFORMATION”** by cover letter or by

labeling such media accordingly. For the sake of clarity, a document that has the Caption “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY INFORMATION” on its first page shall be afforded the full protections and treatment of Highly Confidential—Attorneys’ Eyes Only Information even if the Caption does not appear on all subsequent pages.

b. In the event that, pursuant to further order of the Court or otherwise, any deposition of any person employed by any of the Producing Parties or designee of any of the Producing Parties is taken, transcripts of any such depositions shall be given the protections afforded to Highly Confidential—Attorneys’ Eyes Only Information under this Agreement for a period of fifteen (15) days after a complete copy of the transcript has been provided to the deponent or his or her counsel in order to give the relevant Producing Party the opportunity to designate information contained in the transcript as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information. If, during the 15-day period that the relevant Producing Party has to determine the designations of a deposition transcript, another Party files any papers with the Court that contain or refer to that deposition transcript, such papers must be filed under seal. All Discovery Material used in any deposition or court proceeding (including any document derived from Discovery Material) must be Bates stamped and, if applicable, marked with the appropriate confidentiality designation prior to or during the deposition or court proceeding. Any document used at a deposition must also be designated by deposition exhibit number.

c. No more than fifteen (15) days after receipt of the complete deposition transcript, counsel for any of the Producing Parties, or the deponent, may designate portions of the deponent’s deposition as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information by transcript page number. Such designation shall be communicated in writing to all parties. Any Producing Party or deponent may also designate specific testimony or transcript pages as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information by notice on the record at the deposition.

d. If the duplicating process by which copies or reproductions of Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information are made does not preserve the Caption that appears on the original documents, all such copies or reproductions shall be given the appropriate Caption (“CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY INFORMATION”) as appropriate by the Receiving Party.

e. A Producing Party that inadvertently fails to designate Discovery Material as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information pursuant to this Agreement at the time of production shall be entitled to make a correction to its designation. Such correction and notice thereof shall be made in writing within a reasonable time after discovery of the inadvertent failure to designate the Discovery Material with the appropriate Caption.

f. In the event that a Producing Party produces two or more identical or substantially identical copies of a document or other material, and any copy is designated Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information, while other copies are not so designated, all such identical or substantially identical documents or other materials shall be afforded the treatment associated with highest level of confidentiality associated with that document or information; this duty arises only to the extent the Producing Party notifies the Receiving Parties of the existence and bates numbers or other identifying information of such non- or under-designated copies.

4. Permissible Disclosure of Confidential Information. Subject to paragraph 6 below, Confidential Information may be disclosed only to:

a. Members of the Equity Committee, the Debtors, members of the Creditors Committee and the Settlement Note Holder Parties;

b. Current counsel for the Parties, including in-house counsel and outside counsel of record that has appeared in the Debtors’ chapter 11 cases on behalf of such Party;

c. Legal assistants, secretaries, staff or agents working with or for such counsel (as described in paragraph 4(b), above), but only to the extent reasonably necessary to render professional services in these chapter 11 cases;

d. Litigation support services, including outside copying services and e-discovery firms;

e. Any person identified as an author of a document designated as containing Confidential Information, or any person to whom a copy of such document was sent prior to its production in Permitted Discovery;

f. Court officials involved in these chapter 11 cases;

g. Court reporting personnel involved in taking or transcribing testimony in these chapter 11 cases;

h. Any mediator or arbitrator engaged by the Parties or appointed by the Court to the extent that such mediator or arbitrator is engaged or appointed to resolve a dispute between any of the Settlement Note Holder Parties and another Party to this Agreement;

i. Outside financial advisors or experts retained for the purpose of assisting in-house counsel, or outside counsel of record (as described in paragraph 4(b), above), provided that they comply with the requirements of paragraph 6, below;

5. Permissible Disclosure of Highly Confidential—Attorneys’ Eyes Only Information.

Highly Confidential—Attorneys’ Eyes Only Information may be disclosed only to:

a. Current employees, officers, directors of the Settlement Note Holder Party that designated the Discovery Material as Highly Confidential—Attorneys’ Eyes Only;

b. Current Outside Counsel who have appeared in these chapter 11 cases on behalf of the Parties;

c. Legal assistants, secretaries, staff or agents working with or for counsel (as described in Paragraph 5(b)), but only to the extent reasonably necessary to render professional services in these chapter 11 cases;

- d. Litigation support services, including outside copying services and e-discovery firms;
- e. Any person identified as an author of a document designated as Highly Confidential—Attorneys’ Eyes Only, or any person to whom a copy of such document was sent prior to its production in Permitted Discovery;
- f. Court officials involved in these chapter 11 cases;
- g. Court reporting personnel involved in taking or transcribing testimony in these chapter 11 cases;
- h. Any mediator or arbitrator engaged by the Parties or appointed by the Court to the extent that such mediator or arbitrator is engaged or appointed to resolve a dispute between any of the Settlement Note Holder Parties and another Party to this Agreement; and
- i. Outside financial advisors or experts retained for the purpose of assisting outside counsel of record (as described in paragraph 5(b), above), provided that they comply with the requirements of paragraph 6, below;
- j. To the extent depositions occur by order or otherwise, current Outside Counsel for Parties to this Agreement;

6. Confidentiality Undertaking. Before any person described in paragraphs 4(i) or 5(i) is given access to Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information, the individual to whom disclosure is to be made shall first read this Agreement, and execute an acknowledgment (the “Acknowledgement”) in the form attached hereto as Exhibit 1. Execution of that Acknowledgment confirms the signatory’s understanding of this Agreement, willingness to be bound by the provisions of this Agreement, and agreement to waive any objection, jurisdictional or otherwise, to the exercise by the Court of its power to enforce the terms of this Agreement by such means as the Court deems appropriate. Copies of such Acknowledgments shall be held by counsel of record for the Party so disclosing the Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information. The Acknowledgments executed pursuant to this paragraph shall be

discoverable only upon order of the Court for good cause shown in the context of a bona fide dispute about compliance with this Agreement. Counsel for any Party to whom Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information has been furnished shall be responsible for restricting disclosure in accordance with the provisions of this Agreement. All persons who have received Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information shall take all necessary steps to safeguard such information so as to avoid its disclosure to persons who are not eligible to receive it.

7. Conflicting Designations with Debtors’ Confidentiality Order. In the event that an identical or substantially similar version of a document is produced by different parties, i.e., both the Debtors and the Settlement Note Holder Parties, and the parties attribute conflicting confidentiality designations to such documents, the more restrictive confidentiality designation shall govern, provided that the party attributing the more restrictive designation identifies the conflict and the document(s) to which a more restrictive designation applies, subject to the challenge provisions set forth in both the Order Governing the Use of Discovery Materials In Connection with Plan Confirmation [Docket No 5407] entered by the Court on September 9, 2010 and this Agreement.

8. Challenges to Designations of Confidentiality. A Party that receives Discovery Materials may, after first attempting to resolve the matter by agreement, apply to the Court pursuant to the applicable rules, for a ruling that certain Discovery Materials designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information is not entitled to that confidential status or protection. It is understood and agreed that the producing party will have the burden of establishing the grounds for confidential treatment of the document or testimony at issue. The confidential status of the documents, testimony, or information at issue shall be maintained pending the Court’s ruling on the motion and any appeal therefrom.

9. Special Rules for Filings and Submissions. If any Receiving Party files or otherwise submits to the Court any documents or exhibits containing or making references to the content of Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information, including, but

not limited to, pleadings, memoranda, transcripts and discovery responses, such documents or exhibits shall be filed under seal in a sealed envelope marked with the caption of these chapter 11 cases, the highest level of confidentiality applicable (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY INFORMATION”) and bearing the following statement:

FILED UNDER SEAL PURSUANT TO CONFIDENTIALITY AGREEMENT DATED FEBRUARY __, 2011. THIS ENVELOPE IS NOT TO BE OPENED NOR THE CONTENTS THEREOF DISPLAYED OR REVEALED EXCEPT BY OR AS DIRECTED BY THE COURT.

unless (i) at least five (5) business days (but in no event less than 48 hours) prior to the commencement of the Confirmation Hearing to confirm the Plan or any amendment thereto or any hearing or proceeding in connection with an Objection (as applicable, the “Hearing”), a Party seeking to introduce such information at the Hearing designates to the Producing Party that produced the document or information (a) such documents or exhibits it determines to file or otherwise submit to the Bankruptcy Court and/or (b) the Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information that the Party intends to reference or otherwise use at the Hearing, and (ii) the Equity Committee either (1) obtains from the relevant Settlement Note Holder Party, with respect to Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information provided by the relevant Settlement Note Holder Party, to the extent applicable, a written waiver of the prohibition against (y) filing such designated documents or exhibits (except under seal) and/or (z) using such designated Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information at the Hearing, or (2) obtains an order of the Court, upon prior written notice to the Producing Party, modifying or eliminating such prohibition.

10. Nonwaiver of Privileges.

a. In accordance with the applicable Rules (including Federal Rule of Evidence 502(d)), inadvertent disclosure in the course of Permitted Discovery of any document

or information (whether designated as Confidential Information or Highly Confidential—Attorneys’ Eyes Only Information, or not) shall not be deemed to waive whatever attorney-client privilege, work-product protection or other privilege or immunity that would otherwise attach to the document or information produced or to other documents or information. If a Receiving Party or any person permitted to review Discovery Materials pursuant to Paragraphs 4 and/or 5 of this Agreement receives any information that is either (i) subject to a good faith claim of privilege or (ii) upon reasonable review appear to be subject to a legally recognized privilege, that Party or person shall provide immediate notice to Settlement Note Holder Party that produced the Discovery Material, shall not review the apparently privileged information, and shall return any Discovery Materials containing the apparently privileged information, as well as delete or destroy any copies of such materials. Upon notification by any of the Settlement Note Holder Parties that any of the Settlement Note Holder Parties has inadvertently produced any materials that should not have been included (whether because of applicable privilege or otherwise), the Receiving Parties shall return or destroy any copies of such information within one (1) business day of notification and the Receiving Parties shall not contest the Settlement Note Holder Parties’ recall of such information until after its return or destruction.

b. The return of any documents claimed to be privileged shall not constitute an acknowledgment that the claimed documents or information is in fact privileged or entitled to protections or immunity. Notwithstanding the foregoing, a Receiving Party may promptly present the information to the Court under seal for determination of the Producing Party’s claim that the documents or information is privileged or entitled to protections or immunity and retain a copy of the document for this limited purpose until the Court resolves the claim of privilege. The producing party must preserve the information until the claim is resolved. Nothing in this paragraph will modify any obligation a party otherwise has with respect to inadvertent production under the law or ethical rules.

11. Nonwaiver of Objection to Discovery. Nothing in this Agreement shall affect any of the Producing Party's rights to object to any discovery request, including the right to assert that no discovery should be had of certain documents or information.

12. Subpoenas Seeking Confidential Information or Highly Confidential—Attorneys' Eyes Only Information. If a Receiving Party that has obtained Confidential Information or Highly Confidential—Attorneys' Eyes Only Information under the terms of this Agreement receives a subpoena or other legal process commanding the production of any such documents or information (a "Subpoena"), such Party shall promptly notify the Settlement Note Holder Party that designated the information or documents as Confidential Information or Highly Confidential—Attorneys' Eyes Only Information of the service of the Subpoena. The Party that receives the Subpoena shall not produce any Confidential Information or Highly Confidential—Attorneys' Eyes Only Information in response to the Subpoena without either (i) the prior written consent of the Settlement Note Holder Party that designated the documents or information as Confidential Information or Highly Confidential—Attorneys' Eyes Only Information, or (ii) an order of a court of competent jurisdiction. The Settlement Note Holder Party that designated such Discovery Material as Confidential Information or Highly Confidential—Attorneys' Eyes Only Information shall have the burden of seeking a court order relieving the subpoenaed party of the obligations of the Subpoena prior to the return date of such Subpoena, or the subpoenaed party shall be relieved of its obligations under this paragraph.

13. Return of Information Upon Request. Confidential Information or Highly Confidential—Attorneys' Eyes Only Information shall promptly, upon request, be returned to the Producing Party or promptly destroyed. Nothing set forth in this paragraph 12 shall require the destruction of the Receiving Party's work product. The return and/or destruction of Confidential Information or Highly Confidential—Attorneys' Eyes Only Information referenced in this paragraph 12 shall not be required prior to the entry of a Final Order (or orders) confirming the Plan, as the same may be amended, modified or supplemented, or, if an Objection is filed, then until such Objection is resolved pursuant to a Final Order.

14. Return of Information Upon Plan Confirmation or Final Resolution of any Objection.

The provisions of this Agreement shall not terminate upon entry of a Final Order (or orders) confirming the plan. Within sixty (60) days after the entry of a Final Order (or orders) confirming the plan, or, if an Objection is filed, then within sixty (60) days after such Objection is resolved pursuant to a Final Order Confidential Information or Highly Confidential—Attorneys' Eyes Only Information and all copies of same, and all documents containing or referring to Confidential Information or Highly Confidential—Attorneys' Eyes Only Information, other than trial transcripts and trial exhibits admitted into evidence, and copies of any pleading or paper filed of record with the Court, shall either be returned to the producing party or person or destroyed.

15. Destruction of Discovery Material. Wherever in this Agreement, a Receiving Party elects to destroy Discovery Material instead of returning that Discovery Material, the Receiving Party must notify the Producing Party in writing of how and when such Discovery Material was destroyed.

16. Other Obligations. The provisions of this Agreement shall not contravene any written confidentiality agreement to which any Party agreed to be bound prior to the commencement of these cases.

17. No Bar Against Seeking Further Protection. Nothing in this Agreement shall be construed as preventing any Party from seeking further protection from the Bankruptcy Court for any materials produced during discovery.

18. No Admission Regarding Admissibility or Relevancy. Nothing in this Agreement shall be construed to affect in any way the admissibility or relevancy of any materials produced during discovery or other evidence.

19. Binding Effect. This Agreement shall bind the Parties and any person who executes an Acknowledgement Form. Any violation of this Agreement shall be subject to enforcement and penalties as if it had been so ordered by the Bankruptcy Court.

20. Continuing Jurisdiction. The Bankruptcy Court retains exclusive jurisdiction to enforce, modify, or vacate all or any portion of this Agreement upon appropriate motion by a party in interest.

21. Execution of Agreement. This Agreement may be executed by facsimile, electronically and in counterparts.

AGREED TO AND ACCEPTED BY:

ASHBY & GEDDES, P.A.



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as to Appaloosa Management L.P., Centerbridge
Partners, L.P and Owl Creek Asset Management
L.P.*

-and-

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AGREED TO AND ACCEPTED BY:

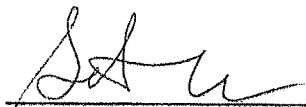
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Security Holders of Washington Mutual, Inc., et al.,
as to Appaloosa Management L.P., Centerbridge
Partners, L.P and Owl Creek Asset Management
L.P.*

-and-

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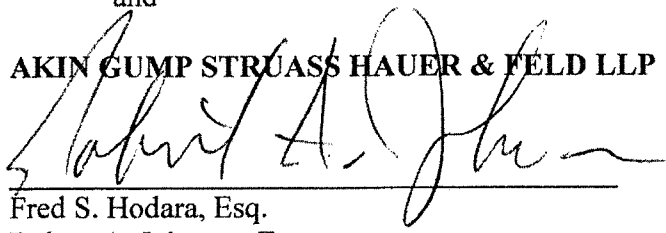
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