

IN THE CIRCUIT COURT OF LEWIS COUNTY, WEST VIRGINIA

**STEVEN R. PETERS and
DELLA JANE WOOFER,
d/b/a D.J. BROADCASTING,**

Plaintiffs,

v.

**J&J LAND PROPERTIES, LLC,
a West Virginia Corporation,**

Defendant.

**Civil Action No. 14-C-36
H. Charles Carl, III, Judge**

CIRCUIT CLERK

FILED

CONSENT PROTECTIVE ORDER

WHEREAS, this Consent Protective Order is hereby agreed to by the parties, through their respective attorneys, for the purpose of facilitating mutual discovery by providing appropriate protections for discovery and other materials that any party reasonably believes contain confidential financial information or other confidential or propriety information.

AND, WHEREAS, other parties hereto, while not specifically conceding the privileged, proprietary or confidential nature of said materials or the consequences of their public disclosure, are being permitted to inspect and obtain said materials and information for use in the course of this litigation.

IT IS THEREFORE ORDERED that:

1. Any party to this action or other person who produces or supplies information, documents or other materials for use in this action may designate as "Confidential" any such information, documents or materials that it reasonably and in good faith believes constitutes or contains proprietary business, financial, or "trade secret" information or information which

qualifies as "personal" or "confidential" such that it qualifies for protection from dissemination under *W.Va.R.Civ.P. 26(c)*. The designation "Confidential" shall be made by written notification and/or labeling said documents as "confidential" at the time the producing party serves to all other counsel of record said documents. Documents or material so designated shall be revealed only as provided herein. By entering this Consent Protective Order, the Court does not intend to create any presumption with regard to the actual confidentiality of any material, or to alter the normal burden of proof necessary for obtaining a protective order from the Court. Any dispute between the parties as to the confidentiality of any specific material shall be resolved pursuant to paragraph 2 of this Consent Protective Order.

2. If a party contests the assertion that any protected material qualifies as "Confidential" pursuant to this Consent Protective Order, the contesting party shall notify in writing counsel for the producing or disclosing party and identify the material which is contested. Upon such written notification, the producing or disclosing party shall have thirty (30) days to file a Motion for Protective Order with respect to the contested material. The confidentiality of the contested material shall be maintained in accordance with this Consent Protective Order until and unless the Court rules that the contested material is not entitled to such protection. As to any contested materials for which a Motion for Protective Order is not made or the requested relief is denied, that material shall be deemed outside the scope of this Consent Protective Order.

3. A party's attorney may distribute materials protected by this Consent Protective Order or share information obtained from materials protected by this Consent Protective Order with the following categories of persons and no others, except by further order of the Court:

a. the parties in this case including their, members, officers, owners, managers, and employees (including independently contracted consultants).

b. members of the legal or support staff of a party's attorneys.

c. experts and consultants retained by a party's attorneys to assist in the evaluation, preparation or testimony in this case,

d. the Court, the Court's personnel, witnesses at trial and the jury; and

e. non-party witness at a deposition but such a document and all testimony relating to such document shall be provided only to those persons otherwise entitled to such protected material pursuant to paragraph 3(a) through 3(d) of this Order, and shall not be retained by such witness;

f. A court reporter and/or videographer during the course of a deposition. Once a Designating Party has advised the court reporter or videographer that Confidential Information may be disclosed during a deposition, the portions of any deposition transcript in which Confidential Information is discussed, and any Confidential Information, documents or materials that are marked as exhibits shall be treated as Confidential Information within the purview of this Consent Protective Order.

4. If a party or attorney wishes to disclose any document or other material which is marked "**CONFIDENTIAL**," or the contents thereof, to any person actively engaged in working on this action (e.g., expert witness, paralegal, associate, consultant), the person making the disclosure shall do the following:

a. Provide a copy of this Protective Order to the person to whom disclosure is made;

- b. Inform the person to whom disclosure is made that s/he is bound by this
- c. Require the person to whom disclosure is made to sign an acknowledgment and receipt of this Protective Order;
- d. Instruct the person to whom disclosure is made to return any document or documents designated as "confidential" a party to whom "confidential" materials has been provided may destroy said documents within sixty (60) days of the conclusion of this litigation, including the running of the time period for any applicable appeal of any final decision in this civil action.

5. The party to whom confidential materials have been supplied, must maintain a list of persons to whom disclosure was made and the "CONFIDENTIAL" materials which were disclosed to that person.

6. Any document or other material which is marked "CONFIDENTIAL," or the contents thereof, may be used by a party, or a party's attorney, expert witness, consultant, or other person to whom disclosure is made, only for the purpose of this action. Nothing contained in this Protective Order shall prevent the use of any document or other material which is marked "CONFIDENTIAL," or the contents thereof, at any discovery deposition taken in this action.

7. Unless otherwise Ordered by the Court, documents designated as "Confidential" and references thereto may be included in or appended to Court filings such as motions and may be submitted and/or filed as Trial Exhibits in accordance the Scheduling Order entered by the Court. It is responsibility of each Disclosing Party to make appropriate motions and to secure appropriate Orders from the Court to the effect that any documents disclosed by the at party, which are marked "Confidential-Subject to Protective Order" only be filed with the Court under

seal.

8. In the event that any person (a) is served with a subpoena in another action, or (b) is served with a demand in another action to which he or she is a party, or (c) is served with any other legal process by one not a party to this litigation seeking protected material, that person shall give prompt written notice of such event to counsel of record for the producing or disclosing party. The producing or disclosing party shall assume responsibility for preserving and prosecuting any objection to the subpoena or demand. The person served shall be obligated to cooperate to the extent necessary to preserve the confidentiality of the protected material until ruled upon by a court of competent jurisdiction.

Should the person seeking access to the protected material take action to enforce such a subpoena, demand, or other legal process, the person so served shall set forth in his response the existence of this Consent Protective Order and shall decline access to the protected material in the absence of an order issued by a court of competent jurisdiction. Nothing herein shall be construed as requiring the receiver to challenge or appeal any order requiring production of protected material, or to subject himself to any penalty for noncompliance with any legal process or to seek any relief from the Court.

9. Nothing herein shall be deemed to limit any party's rights to discovery in connection with this action, or to restrict the prosecution, defense or settlement of this litigation.

10. The provisions of this Consent Protective Order shall not terminate at the conclusion of all aspects of this litigation, all originals and copies of material subject to this Consent Protective Order which are in a party's possession, or the possession of its retained experts or consultants shall be returned to the party or person which produced the documents or,

to the extent documents contain confidential notes of the receiving party or attorney, such documents may be destroyed. Counsel of record shall deliver certification of compliance to the counsel for the party who produced the documents within sixty (60) days after final termination of this litigation, indicating that the documents have either been returned or destroyed.

11. This Consent Protective Order may be modified by the Court *sua sponte*, or upon motion of the parties for good cause shown and the Court shall retain continuing jurisdiction to modify, amend, enforce, interpret or rescind this Consent Protective Order notwithstanding the termination of this action.

It is **SO ORDERED** this 21 day of March, 2017.

The Clerk is hereby directed to transmit certified copies of this Order to counsel of record for all parties.

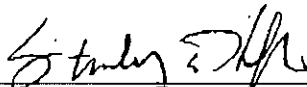
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H. Charles Carl, III, Presiding Judge

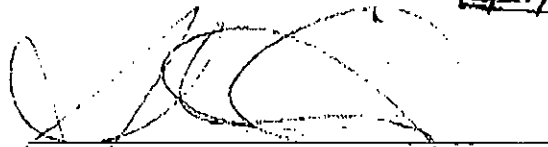
Reviewed and Approved By:



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