

**IN THE CIRCUIT COURT OF PLEASANTS COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**BB LAND, LLC, a West Virginia company,  
and JB EXPLORATION 1, LLC, a  
West Virginia company,**

**Plaintiffs,**

**v.**

**Civil Action No. 18-C-2**

**Presiding Judge: Honorable Joanna I. Tabit**

**Resolution Judge: Honorable H. Charles Carl**

**BLACKROCK ENTERPRISES, LLC,  
a West Virginia company, and  
Michael L. Benedum,**

**Defendant.**

**FILED IN OFFICE**

**JUL 02 2018**

**MILLIE FARNSWORTH  
CIRCUIT COURT CLERK  
PLEASANTS COUNTY**

**Agreed Protective Order**

By signing this Agreed Protective Order, the parties agree to be bound by its terms and to request its entry by this Court. It is hereby **ORDERED** as follows:

**I. DEFINITIONS**

a. "CONFIDENTIAL" means designated proprietary business, technical, and other commercially-sensitive information, and/or personal information about third-parties.

b. PRODUCING PARTY means a party who produces "CONFIDENTIAL" or otherwise privileged information that is governed and protected by this Agreed Protective Order.

c. RECEIVING PARTY means a party who receives "CONFIDENTIAL" or otherwise privileged information that is governed and protected by this Agreed Protective Order.

## **II. DISCOVERY PHASE**

a. The parties recognize that discovery in this matter may call for the production of materials containing confidential and proprietary business, technical, and other commercially-sensitive information, and/or personal information about third-parties, and that the PRODUCING PARTY has a protected proprietary and property interest in those materials, or otherwise has an interest in preventing the dissemination of information about third-parties.

b. Nothing in this Agreed Protective Order shall be interpreted to require the production of any trade secret information.

c. If a party or an attorney for a party has a good-faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a discovery or other request, are confidential and should not be disclosed other than in connection with this action and pursuant to this Agreed Protective Order, the party or attorney shall mark each such document or other material as "CONFIDENTIAL."

d. No RECEIVING PARTY subject to this Agreed Protective Order shall distribute, transmit, or otherwise divulge any document or other material which is marked "CONFIDENTIAL," or the contents thereof, except in accordance with this Agreed Protective Order. Court personnel are not subject to this Agreed Protective Order while engaged in the performance of their official duties.

e. In order to designate a portion of any document or other printed material as "CONFIDENTIAL," the PRODUCING PARTY shall mark the designated pages of the material with the word "CONFIDENTIAL" in a manner that does not obscure or impair the legibility of any information contained within the material, but makes it difficult to remove the designation. In order to designate a computer database, disc, compact disc, drive, or other

electronically recorded material as "CONFIDENTIAL," the PRODUCING PARTY shall mark the disc, case, or envelope containing the material with the word "CONFIDENTIAL." Documents printed from such electronic media shall be marked the same as documents originally produced on paper.

f. Any document or other material which is marked "CONFIDENTIAL," or the contents thereof, may be used by the RECEIVING PARTY, or the RECEIVING PARTY's expert witness, consultant, or other person to whom disclosure is made, only for the purpose of this action. Nothing contained in this Agreed 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.

g. In the case of a deposition or oral examination involving information marked "CONFIDENTIAL," counsel for the PRODUCING PARTY may, during the deposition, designate on the record that testimony involving information marked "CONFIDENTIAL" be held as "CONFIDENTIAL," and the entire deposition transcript will be treated as "CONFIDENTIAL" until counsel for the PRODUCING PARTY receives a transcript of the deposition and designates specific page and line portions of the testimony as "CONFIDENTIAL." In the event the PRODUCING PARTY's counsel during the deposition does not designate on the record that testimony involves "CONFIDENTIAL" information, the PRODUCING PARTY does not waive its right to designate the deposition testimony or any part thereof as "CONFIDENTIAL" upon receipt of the deposition transcript.

After receipt of the final deposition transcript, the PRODUCING PARTY shall identify by page and line the portion of the material that the PRODUCING PARTY intends to designate as "CONFIDENTIAL" in a written letter served to all counsel of record within thirty

(30) days after the PRODUCING PARTY's receipt of the written deposition transcript from the court reporter. Only the portions of the deposition transcript designated by the PRODUCING PARTY during this time period shall remain "CONFIDENTIAL."

Any party challenging the "CONFIDENTIAL" designations of the deposition transcripts shall inform the PRODUCING PARTY of those specific challenges in writing within 20 days of receiving the designations. The PRODUCING PARTY shall have twenty (20) days from receipt of the written challenges to move for an appropriate order regarding the confidentiality of all or portions of the transcript

**h.** If a RECEIVING PARTY 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 (specifically excluding any paralegal, associate attorney, or staff of the undersigned counsel), the RECEIVING PARTY making the disclosure shall do the following:

- 1.** Provide a copy of this Agreed Protective Order to the person to whom disclosure is made;
- 2.** Inform the person to whom disclosure is made that he/she is bound by this Agreed Protective Order;
- 3.** Require the person to whom disclosure is made to sign an acknowledgement and receipt of this Agreed Protective Order;
- 4.** Instruct the person to whom disclosure is made to return any document or other material which is marked "CONFIDENTIAL" at the conclusion of the case, including notes or memoranda made from "CONFIDENTIAL" material;

5. Maintain a list of persons to whom disclosure was made and the “CONFIDENTIAL” materials disclosed to that person; and

6. At the conclusion of the action, in accordance with any applicable laws and/or regulations, gather the “CONFIDENTIAL” materials, copies thereof, and related notes and memoranda, and either return them or destroy them and send a certificate of compliance with the terms of this Agreed Protective Order to the party or attorney who originally disclosed the “CONFIDENTIAL” materials.

i. Any party may challenge a “CONFIDENTIAL” designation at any time. Unless a prompt challenge to a PRODUCING PARTY’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of litigation, a party does not waive its right to challenge a “CONFIDENTIAL” designation by electing not to mount a challenge promptly after the original designation is disclosed. A party challenging a “CONFIDENTIAL” designation should meet-and-confer with the opposing party and attempt to resolve any disputes in good faith.

j. As contemplated by Rule 502(d) of the West Virginia Rules of Evidence, the production of privileged or work-product protected documents, including but not limited to electronically stored information (ESI), is not a waiver of the privilege or protection from discovery in this case, any related adversarial proceeding or contested matter, or in any other federal or state proceeding.

If prompt notification is made, the privileged or work-product protected documents that may be produced and all copies thereof, as well as all notes or other work product reflecting the contents of such materials, shall be returned to the PRODUCING PARTY or destroyed, and such returned material shall be deleted from any litigation-support file or database. The

RECEIVING PARTY shall not use any privileged or work-product protected documents that may be produced during discovery or at trial if prompt notification of any such disclosure is made by the PRODUCING PARTY. Notwithstanding the provisions set forth in this subsection, this Order shall be interpreted to provide the maximum protection offered by West Virginia Rule of Evidence 502(d).

k. If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

1. Promptly notify in writing the PRODUCING PARTY. Such notification shall include a copy of the subpoena or court order;

2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Agreed Protective Order. Such notification shall include a copy of this Agreed Protective Order;

3. Cooperate with respect to all reasonable procedures sought to be pursued by the PRODUCING PARTY whose “CONFIDENTIAL” information may be affected; and

4. Not produce any information designated in this action as “CONFIDENTIAL” if the PRODUCING PARTY timely seeks a protective order to bar the production of aforementioned “CONFIDENTIAL” material, unless the PRODUCING PARTY’s protective order is ultimately denied in the other litigation.

**l.** If a party receiving information marked "CONFIDENTIAL" learns that, by inadvertence or otherwise, it disclosed "CONFIDENTIAL" material to any person or in any circumstances not authorized under this Agreed Protective Order, the party must immediately:

**1.** Notify in writing the party that produced the information marked "CONFIDENTIAL" of the unauthorized disclosure;

**2.** Use its best efforts to retrieve all unauthorized copies;

**3.** Inform the person or persons to whom unauthorized disclosures were made of all the terms of this Agreed Protective Order; and

**4.** Request that such person or persons execute the "Acknowledgement and Agreement to Be Bound" that is attached hereto as Exhibit A.

**m.** If the RECEIVING PARTY contends that the notification of inadvertent production was not "prompt," it shall notify the PRODUCING PARTY in writing, and shall make no further use of such documents pending a resolution of their status by the Court.

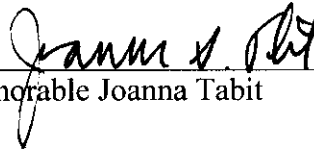
### **III. POST-DISCOVERY PHASE**

**a.** If any party or attorney wishes to file, or use as an exhibit or as evidence at a hearing or trial, any "CONFIDENTIAL" document or material, he/she must provide reasonable notice to the party that produced the document or material. The parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by either (a) removing the "CONFIDENTIAL" marking, or (b) creating a mutually acceptable redacted version that suffices for purposes of the case. If an amicable resolution proves unsuccessful, the parties and/or attorneys may present the issue to the Court for resolution.

**b.** Within sixty (60) days after the final disposition of this action, each party that received information marked "CONFIDENTIAL" must return all that material

the PRODUCING PARTY or destroy such material. Each party shall certify, in writing, that information marked "CONFIDENTIAL" was returned to the PRODUCING PARTY or otherwise destroyed.

ENTERED on the 28<sup>th</sup> day of June, 2018.

  
Honorable Joanna Tabit



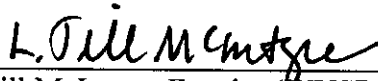
Prepared by:



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and

D. Luke Thomas (WVSB #9999)  
JACKSON KELLY PLLC  
45 Professional Place – Suite 200  
Bridgeport, WV 26330

**Exhibit A**  
**Acknowledgment and Agreement to be Bound**

I hereby acknowledge and affirm that I have read the terms and conditions of the Agreed Protective Order dated \_\_\_\_\_ and agreed to by the parties in the action titled *BB Land, LLC, et al. v. Blackrock Enterprises, LLC, et al.* I understand the terms of the Agreed Protective Order and under oath consent to be bound by such terms as a condition to being provided access to materials marked "CONFIDENTIAL" furnished by the parties in this action. Further, by executing this Agreement, I hereby consent to the jurisdiction of the above-captioned Court or any Court of competent jurisdiction for the special and limited purpose of enforcing the terms of the Protective Order.

I recognize that all civil remedies for breach of this Agreement are specifically reserved by the producing parties in this action and are not waived by the disclosure provided for herein. Further, in the event of the breach of this Agreement, I recognize that the producing parties may pursue all civil remedies available to them as third-party beneficiaries of this Agreement.

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

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing **Acknowledgement and Agreement to be Bound** was acknowledged, sworn to, and subscribed before me, a Notary Public of the State of \_\_\_\_\_, by \_\_\_\_\_, on this, the \_\_\_\_ day of \_\_\_\_\_, 2018.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary

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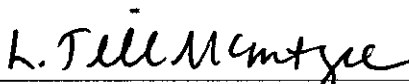
**BLACKROCK ENTERPRISES, LLC,  
a West Virginia company, and  
Michael L. Benedum,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I, L. Jill McIntyre, counsel for Defendants Blackrock Enterprises, LLC and Michael L. Benedum, do hereby certify that I have served a true and accurate copy of the attached *Agreed Protective Order*, this 27<sup>th</sup> day of June, 2018, on counsel of record via United States mail, postage fully paid, addressed as follows:

Ronda L. Harvey, Esquire  
Evan G. Conard, Esquire  
Bowles Rice LLP  
600 Quarrier Street, 25301  
PO Box 1386  
Charleston WV 25325-1386  
*Counsel for Plaintiffs*

  
\_\_\_\_\_  
L. Jill McIntyre (WVSB #8837)