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9
 10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

13 LANDMARK AMERICAN
 14 INSURANCE COMPANY, a
 corporation,

 15
 16 Plaintiff,

 17 vs.
 18 TAISEI CONSTRUCTION
 CORPORATION, a Delaware
 19 corporation; and DOES 1 through 100
 inclusive,
 20 Defendants.

) **Case No.: 2:16-CV-09169 R(PJWx)**
)
) **PROTECTIVE ORDER**
)
) Date Action Filed: December 12, 2016
) Trial Date: September 11, 2018

21
 22 **TO ALL PARTIES AND COUNSEL:**

23 After considering the stipulation filed by Plaintiff LANDMARK
 24 AMERICAN INSURANCE COMPANY (“Landmark”) and Defendant TAISEI
 25 CONSTRUCTION CORPORATION (“Taisei”) on June 20, 2018, and good
 26 cause appearing therefore,

27 **IT IS HEREBY ORDERED THAT:**

1 1. This Protective Order shall govern all items or information that are
2 produced, disclosed, or generated in connection with discovery, including but not
3 limited to all initial disclosures, discovery responses, deposition testimony,
4 deposition exhibits or other documents, including electronic media, and tangible
5 materials of any kind, however communicated, produced in this litigation
6 (collectively referred to as “Materials”) that the Parties to this action may
7 designate as “CONFIDENTIAL.” As used herein, “Parties” refers to the parties
8 to this action (Landmark is inclusive of RSUI Group, Inc. as well as Claims
9 Resource Management, Inc.).

10 2. The Parties may designate as “CONFIDENTIAL” any Materials or
11 information of a proprietary, financial, or competitively sensitive nature;
12 Materials or information that is protected against disclosure to any non-Party by
13 any applicable privilege, work product protection, or other statutory or common
14 law protection, including Materials created or produced in connection with
15 *Wilshire Vermont Housing Partners v. Taisei, et al.*, filed in Los Angeles
16 Superior Court Case No. BC504178 (the “Underlying Action”); research,
17 technical, commercial or financial information that the producing Party has
18 maintained as confidential; confidential personal identification information; or
19 any confidential insurance information, including, but not limited to, any such
20 claims information, by placing in a conspicuous location on the Materials or
21 information the word “CONFIDENTIAL” or by informing all Parties in writing
22 that a specific group of clearly identified documents (identified by bates number
23 or similar designation) are confidential.

24 3. By agreeing to the procedure set forth in this Protective Order to govern
25 how discoverable Materials and information are to be designated
26 “CONFIDENTIAL,” produced, and handled in this litigation, no Party is waiving
27 any applicable privilege, work-product protection, fiduciary duty of loyalty or
28 confidentiality, or any statute, rule, or common law provision that prohibits or

1 restricts disclosure of any documents or other information to any other Party to
2 this litigation and/or to any third party. Any Party claiming a right to receive
3 documents or other information in discovery in this action must support that
4 claimed right independent of the existence or contents of this Protective Order
5 and cannot claim to have obtained any such right by virtue of the existence or
6 contents of this Protective Order. Nothing contained in this Protective Order shall
7 constitute an admission or determination that any Material or information is
8 confidential, subject to discovery, or protected from discovery.

9 4. All non-public material related to the representation and defense of
10 Taisei in the Underlying Action, produced by the Parties in the present action
11 shall be presumed “CONFIDENTIAL” pursuant to the terms of this Protective
12 Order.

13 5. Any Party may also designate as “CONFIDENTIAL” any portion of a
14 deposition transcript of its agent or employee, the agent or employee of another
15 Party, or of a third party that contains confidential information relating to that
16 Party by a statement on the record at the time of the deposition or by written
17 designation within forty-five days after the deposition. If no indication on the
18 record is made, all Materials and information disclosed during a deposition shall
19 be deemed “CONFIDENTIAL” until the expiration of the forty-five day period
20 within which any Party may designate the Material or information as
21 “CONFIDENTIAL.” Any “CONFIDENTIAL” Material or information that is
22 used in the taking of a deposition shall remain subject to the provisions of this
23 Protective Order, along with the transcript pages of the deposition testimony that
24 discuss the “CONFIDENTIAL” Material or information.

25 6. No Materials or information designated as “CONFIDENTIAL” shall be
26 furnished, shown or otherwise disclosed to any person, except the following: 1)
27 counsel for the Parties and any attorneys, paralegals, assistants, clerks, and
28 support staff assisting such counsel; 2) essential employees of a Party, or other

1 potential witnesses, with whom it is considered in good faith necessary to consult
2 in connection with the prosecution or defense of this case; 3) qualified persons
3 taking testimony, including court reporters and videographers; 4) outside
4 consultants and experts retained by the Parties to consult and/or assist counsel in
5 the preparation and trial of this litigation; 5) the Court, jury, and court personnel;
6 6) document processing and hosting vendors, and graphics, translation, design,
7 and/or trial consulting services; and 7) any mediator selected by the Parties or
8 appointed by the Court to mediate the claims at issue in this litigation and the
9 support staff for the mediator. This restriction on the disclosure of
10 “CONFIDENTIAL” Material may be modified by court order and does not apply
11 where the designating Party has given its written consent to the disclosure.

12 7. All Materials or information designated as “CONFIDENTIAL” shall be
13 used solely for the prosecution or defense of this litigation, including dispositive
14 motions, trial, and any related appellate proceeding. The Parties’ disclosure of
15 confidential Materials or information in this litigation is made pursuant to and
16 under the protection of this Protective Order and such disclosure shall not be
17 deemed a waiver of any privilege, work product, trade secret, or other
18 protections. A Party may use for any purpose its own documents and information
19 that it produces or discloses in this litigation or obtains outside of this litigation
20 and the use of such documents and information shall not be considered a
21 violation of this Protective Order.

22 8. Before any consultants, experts, mediators, or non-Party witnesses or
23 potential witnesses, including any former employees, in this litigation receive or
24 review Materials or information designated as “CONFIDENTIAL,” counsel for
25 the Party making the disclosure shall provide to the person to whom disclosure is
26 planned or proposed a copy of the declaration in the form attached as Exhibit “A”
27 to this Protective Order. Counsel for the disclosing Party shall maintain a
28 complete and current file of Declarations so executed for at least two (2) years

1 after this litigation is finally terminated and shall be made available to counsel for
2 any other Party upon a showing that this Protective Order has been violated or
3 may have been violated. This paragraph does not apply when showing or
4 providing Materials to witnesses at a hearing, trial or deposition, or to any person
5 who, as shown on the face of the document, was an author, addressee, or
6 recipient of the document, including a recipient of a copy.

7 9. Nothing contained in this Protective Order bars or restricts the Parties'
8 attorneys from rendering advice to their respective clients with respect to this
9 litigation. This Protective Order shall not prevent the use of "CONFIDENTIAL"
10 Materials or information in connection with a motion, at a hearing, at trial, or at a
11 deposition provided that the Materials shall be disclosed or displayed only upon
12 the implementation of reasonable safeguards to preserve their confidential status.
13 Any Party submitting evidence designated "CONFIDENTIAL" in connection
14 with a motion in this litigation shall lodge such evidence with the Court
15 conditionally for filing under seal, publicly file redacted versions of their papers
16 which redact any "CONFIDENTIAL" Materials, and serve on the Parties the
17 redacted and non-redacted version of the papers. If the Court requires any
18 showing beyond the existence of this Protective Order and a "CONFIDENTIAL"
19 designation to accept evidence lodged under seal, any Party seeking to have any
20 part of the filing maintained under seal shall have the burden of making the
21 requisite showing, and shall file any supporting materials with the Court,
22 including, but not limited to a motion pursuant to Civil Local Rule 79-5, within
23 seven (7) days of the moving Party's notice of lodgment. If no such showing is
24 made, or the Court deems that the attempted showing was insufficient, the
25 moving Party may file the evidence and unredacted papers with the Court as part
26 of public record. If possible, two (2) days prior to lodging any
27 "CONFIDENTIAL" Material or information conditionally under seal, the Party
28 intending to lodge the "CONFIDENTIAL" Material or information will endeavor

1 to contact the Party that designated the Material as “CONFIDENTIAL” to
2 confirm that the Party requires that the Material or information be conditionally
3 filed under seal.

4 In the event that the Party that designated the Material or information as
5 “CONFIDENTIAL” does not require the Material or information to be filed
6 under seal, the Party filing the motion may file the motion and supporting
7 Material without sealing the “CONFIDENTIAL” Material or information.

8 10. The inadvertent or unintentional disclosure of “CONFIDENTIAL”
9 Materials or information, regardless of whether the Materials were designated as
10 “CONFIDENTIAL” at the time of disclosure, shall not be deemed a waiver of a
11 Party’s claim of confidentiality provided that the Party asserting the claim of
12 confidentiality informs all other Parties of its claim within a reasonable time after
13 learning of the disclosure.

14 11. The restrictions set forth in this Protective Order shall not apply to
15 Material or information disclosed in a manner that does not violate this Protective
16 Order.

17 12. Within sixty (60) days of the final termination of this litigation,
18 including all appeals, the Parties agree to destroy or return to the producing party
19 all copies, including electronic copies, of “CONFIDENTIAL” Materials
20 produced in this litigation. This provision shall not apply to copies of the
21 pleadings or other court filings, working files, claim files, litigation files, or
22 similar material maintained by a Party or its counsel in the ordinary course of
23 maintaining and preserving files related to this litigation and shall not apply to
24 prevent counsel from retaining “CONFIDENTIAL” Materials necessary to
25 comply with the rules of professional conduct. A Party may also maintain copies
26 of “CONFIDENTIAL” Materials pursuant to the express written agreement of
27 the Party that designated the Materials as “CONFIDENTIAL.”
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1 13. Any Party may bring a motion to challenge the designation of Material
2 or information as “CONFIDENTIAL.” Any Party may also bring a motion to
3 challenge the limitations placed upon the use of any particular Material or
4 information designated as “CONFIDENTIAL.” The Party that designated the
5 Material or information as “CONFIDENTIAL” bears the burden of proving that
6 the Material or information is “CONFIDENTIAL” and entitled to the protections
7 of this Protective Order. Any Materials or information challenged pursuant to this
8 paragraph shall be treated as “CONFIDENTIAL” pending the Court’s ruling on
9 the motion brought under this paragraph.

10 14. In the event that 1) any Party is served with a subpoena for the
11 production of Material or information designated as “CONFIDENTIAL” in this
12 litigation and 2) the subpoena was issued by any person or entity that is a party in
13 the Underlying Action of *Wilshire Vermont Housing Partners v. Taisei, et al.*,
14 filed in Los Angeles Superior Court Case No. BC504178, it shall be presumed
15 that such Material or information is protected from disclosure. This presumption
16 is limited to any Materials or information regarding the defense of Taisei in the
17 Underlying Action of *Wilshire Vermont Housing Partners v. Taisei, et al.*, filed
18 in Los Angeles Superior Court Case No. BC504178. Any person or entity
19 seeking the production of Material or information that has been designated as
20 “CONFIDENTIAL” in this litigation that is not a party to this litigation shall bear
21 the burden of proving that it is entitled to the Material or information after giving
22 reasonable notice to the Party that designated the Material or information as
23 “CONFIDENTIAL.”

24 IT IS SO ORDERED.

25 Dated: June 25, 2018



26 MANUEL L. REAL
27 UNITED STATES DISTRICT JUDGE
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1 EXHIBIT A –
2 DECLARATION REGARDING CONFIDENTIALITY

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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

10 LANDMARK AMERICAN
11 INSURANCE COMPANY, a
12 corporation,

13 Plaintiff,

14 vs.

15 TAISEI CONSTRUCTION
16 CORPORATION, a Delaware
17 corporation; and DOES 1 through 100
18 inclusive,

Defendants.

) **Case No.: 2:16-CV-09169 R(PJWx)**

) **DECLARATION REGARDING**
) **CONFIDENTIALITY**

) Date Action Filed: December 12, 2016
) Trial Date: September 11, 2018

19 I hereby declare that:

20 1. I have been provided with a copy of the Protective Order for the case of
21 *Landmark American Insurance Company v. Taisei Construction Corporation*,
22 bearing the case number of 2:16-cv-09169-R-PJW for the United States District
23 Court for the Central District of California. I have read the Protective Order,
24 understand the terms of the Protective Order, and agree to be bound by the terms
25 of the Protective Order.

26 2. As required by the terms of the Protective Order, I will not make or
27 retain possession of copies of any Materials or information designated
28 “CONFIDENTIAL” and I will not use, disclose, make available, or otherwise

1 communicate confidential Materials or information in any manner except for the
2 purpose of my acting as an expert, consultant, and/or witness in the above-
3 entitled litigation.

4 3. I acknowledge that my failure to abide by the terms of the Protective
5 Order and this Declaration may subject me to penalties if I am found to be in
6 contempt of Court.

7 I declare under penalty of perjury under the laws of the State of California
8 and the United States of America that the foregoing is true and correct.

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(Date of Signature) (City, State where Signed) _____

(Print Name of Declarant)