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

FRED LEEDS PROPERTIES and
WHITBOY, LLC,

Plaintiffs,

v.

PHILADELPHIA INDEMNITY
INSURANCE COMPANY; and DOES 1
through 10, inclusive,

Defendant.

Case No.: 2:20-cv-06335- SVW-MAA

**STIPULATED PROTECTIVE
ORDER**

Trial Date: March 30, 2021
Action Filed: June 9, 2020

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Stipulated Protective Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the

1 applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
2 below, that this Stipulated Protective Order does not entitle them to file confidential
3 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
4 followed and the standards that will be applied when a party seeks permission from the
5 court to file material under seal.

6 B. GOOD CAUSE STATEMENT

7 This action is likely to involve trade secrets and other valuable commercial,
8 financial, technical and/or proprietary information for which special protection from
9 public disclosure and from use for any purpose other than prosecution of this action is
10 warranted. Such confidential and proprietary materials and information consist of,
11 among other things, confidential business or financial information, information
12 regarding confidential business practices, or other confidential commercial information
13 (including information implicating privacy rights of third parties), information
14 otherwise generally unavailable to the public, or which may be privileged or otherwise
15 protected from disclosure under state or federal statutes, court rules, case decisions, or
16 common law. Accordingly, to expedite the flow of information, to facilitate the prompt
17 resolution of disputes over confidentiality of discovery materials, to adequately protect
18 information the parties are entitled to keep confidential, to ensure that the parties are
19 permitted reasonable necessary uses of such material in preparation for and in the
20 conduct of trial, to address their handling at the end of the litigation, and serve the ends
21 of justice, a protective order for such information is justified in this matter. It is the
22 intent of the parties that information will not be designated as confidential for tactical
23 reasons and that nothing be so designated without a good faith belief that it has been
24 maintained in a confidential, non-public manner, and there is good cause why it should
25 not be part of the public record of this case.

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1 2. DEFINITIONS

2 2.1 Action: This pending federal lawsuit.

3 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
4 information or items under this Stipulated Protective Order.

5 2.3 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” Information or
6 Items: information (regardless of how it is generated, stored or maintained) or tangible
7 things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as
8 specified above in the Good Cause Statement.

9 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
10 support staff).

11 2.5 Designating Party: a Party or Non-Party that designates information or
12 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
13 or “ATTORNEYS’ EYES ONLY.”

14 2.6 Disclosure or Discovery Material: all items or information, regardless of
15 the medium or manner in which it is generated, stored, or maintained (including, among
16 other things, testimony, transcripts, and tangible things), that are produced or generated
17 in disclosures or responses to discovery in this matter.

18 2.7 Expert: a person with specialized knowledge or experience in a matter
19 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
20 expert witness or as a consultant in this Action.

21 2.8 House Counsel: attorneys who are employees of a party to this Action.
22 House Counsel does not include Outside Counsel of Record or any other outside
23 counsel.

24 2.9 Non-Party: any natural person, partnership, corporation, association, or
25 other legal entity not named as a Party to this action.

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1 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
2 this Action but are retained to represent or advise a party to this Action and have
3 appeared in this Action on behalf of that party or are affiliated with a law firm which
4 has appeared on behalf of that party, and includes support staff.

5 2.11 Party: any party to this Action, including all of its officers, directors,
6 employees, consultants, retained experts, and Outside Counsel of Record (and their
7 support staffs).

8 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
9 Discovery Material in this Action.

10 2.13 Professional Vendors: persons or entities that provide litigation support
11 services (e.g., photocopying, videotaping, translating, preparing exhibits or
12 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
13 their employees and subcontractors.

14 2.14 Protected Material: any Disclosure or Discovery Material that is designated
15 as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

16 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
17 from a Producing Party.

18
19 3. SCOPE

20 The protections conferred by this Stipulated Protective Order cover not only
21 Protected Material (as defined above), but also (1) any information copied or extracted
22 from Protected Material; (2) all copies, excerpts, summaries, or compilations of
23 Protected Material; and (3) any testimony, conversations, or presentations by Parties or
24 their Counsel that might reveal Protected Material.

25 Any use of Protected Material at trial shall be governed by the orders of the trial
26 judge. This Stipulated Protective Order does not govern the use of Protected Material at
27 trial.

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1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Stipulated Protective Order shall remain in effect until a Designating
4 Party agrees otherwise in writing or a court order otherwise directs. Final disposition
5 shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action,
6 with or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10
11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under
14 this Stipulated Protective Order must take care to limit any such designation to specific
15 material that qualifies under the appropriate standards. The Designating Party must
16 designate for protection only those parts of material, documents, items, or oral or written
17 communications that qualify so that other portions of the material, documents, items, or
18 communications for which protection is not warranted are not swept unjustifiably
19 within the ambit of this Stipulated Protective Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that
21 are shown to be clearly unjustified or that have been made for an improper purpose
22 (e.g., to unnecessarily encumber the case development process or to impose
23 unnecessary expenses and burdens on other parties) may expose the Designating Party
24 to sanctions.

25 If it comes to a Designating Party's attention that information or items that it
26 designated for protection do not qualify for protection, that Designating Party must
27 promptly notify all other Parties that it is withdrawing the inapplicable designation.

28 5.2 Manner and Timing of Designations. Except as otherwise provided in this

1 Stipulated Protective Order (see, e.g., second paragraph of section 5.2(a) below), or as
2 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for
3 protection under this Stipulated Protective Order must be clearly so designated before
4 the material is disclosed or produced.

5 Designation in conformity with this Stipulated Protective Order requires:

6 (a) for information in documentary form (e.g., paper or electronic
7 documents, but excluding transcripts of depositions or other pretrial or trial
8 proceedings), that the Producing Party affix at a minimum, the legend
9 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”) or “ATTORNEYS’
10 EYES ONLY” (hereinafter “ATTORNEYS’ EYES ONLY legend”), to each page that
11 contains protected material. If only a portion or portions of the material on a page
12 qualifies for protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins).

14 A Party or Non-Party that makes original documents available for
15 inspection need not designate them for protection until after the inspecting Party has
16 indicated which documents it would like copied and produced. During the inspection
17 and before the designation, all of the material made available for inspection shall be
18 deemed “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” After the inspecting
19 Party has identified the documents it wants copied and produced, the Producing Party
20 must determine which documents, or portions thereof, qualify for protection under this
21 Stipulated Protective Order. Then, before producing the specified documents, the
22 Producing Party must affix the “CONFIDENTIAL legend” or “ATTORNEYS’ EYES
23 ONLY” legend to each page that contains Protected Material. If only a portion or
24 portions of the material on a page qualifies for protection, the Producing Party also must
25 clearly identify the protected portion(s) (e.g., by making appropriate markings in the
26 margins).

27 (b) for testimony given in depositions that the Designating Party
28 identify the Disclosure or Discovery Material on the record, before the close of the

1 deposition all protected testimony.

2 (c) for information produced in some form other than documentary and
3 for any other tangible items, that the Producing Party affix in a prominent place on the
4 exterior of the container or containers in which the information is stored the legend
5 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” If only a portion or portions
6 of the information warrants protection, the Producing Party, to the extent practicable,
7 shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive the
10 Designating Party’s right to secure protection under this Stipulated Protective Order for
11 such material. Upon timely correction of a designation, the Receiving Party must make
12 reasonable efforts to assure that the material is treated in accordance with the provisions
13 of this Stipulated Protective Order.

14
15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality at any time that is consistent with the Court’s Scheduling
18 Order.

19 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
20 resolution process, which shall comply with under Local Rule 37.1 et seq. and with
21 Section 4 of Judge Audero’s Procedures (“Mandatory Telephonic Conference for
22 Discovery Disputes”).¹

23 6.3 The burden of persuasion in any such challenge proceeding shall be on the
24 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
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28 ¹ Judge Audero’s Procedures are available at <https://www.cacd.uscourts.gov/honorable-maria-audero>.

1 to harass or impose unnecessary expenses and burdens on other parties) may expose the
2 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
3 the confidentiality designation, all parties shall continue to afford the material in
4 question the level of protection to which it is entitled under the Producing Party’s
5 designation until the Court rules on the challenge.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is
8 disclosed or produced by another Party or by a Non-Party in connection with this Action
9 only for prosecuting, defending, or attempting to settle this Action. Such Protected
10 Material may be disclosed only to the categories of persons and under the conditions
11 described in this Stipulated Protective Order. When the Action has been terminated, a
12 Receiving Party must comply with the provisions of section 13 below (FINAL
13 DISPOSITION).

14 Protected Material must be stored and maintained by a Receiving Party at a
15 location and in a secure manner that ensures that access is limited to the persons
16 authorized under this Stipulated Protective Order.

17 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
18 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
19 may disclose any information or item designated “CONFIDENTIAL” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this Action, as
21 well as employees of said Outside Counsel of Record to whom it is reasonably
22 necessary to disclose the information for this Action;

23 (b) the officers, directors, and employees (including House Counsel) of
24 the Receiving Party to whom disclosure is reasonably necessary for this Action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this Action and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (d) the Court and its personnel;

1 (e) Court reporters and their staff;

2 (f) professional jury or trial consultants, mock jurors, and Professional
3 Vendors to whom disclosure is reasonably necessary for this Action and who have
4 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (g) the author or recipient of a document containing the information or
6 a custodian or other person who otherwise possessed or knew the information;

7 (h) during their depositions, witnesses ,and attorneys for witnesses, in
8 the Action to whom disclosure is reasonably necessary provided: (1) the deposing party
9 requests that the witness sign the form attached as Exhibit A hereto; and (2) they will
10 not be permitted to keep any confidential information unless they sign the
11 “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed
12 by the Designating Party or ordered by the Court. Pages of transcribed deposition
13 testimony or exhibits to depositions that reveal Protected Material may be separately
14 bound by the court reporter and may not be disclosed to anyone except as permitted
15 under this Stipulated Protective Order; and

16 (i) any mediator or settlement officer, and their supporting personnel,
17 mutually agreed upon by any of the parties engaged in settlement discussions.

18 7.3 Disclosure of “ATTORNEYS’ EYES ONLY” Information or Items. Unless
19 otherwise ordered by the court or permitted in writing by the Designating Party, a
20 Receiving Party may disclose any information or item designated “ATTORNEYS’
21 EYES ONLY” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
23 employees of said Outside Counsel of Record to whom it is reasonably necessary to
24 disclose the information for this Action;

25 (b) the court and its personnel; and

26 (c) the author or recipient of a document containing the information or a
27 custodian or other person who otherwise possessed or knew the information.

28 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN

1 OTHER LITIGATION

2 If a Party is served with a subpoena or a court order issued in other litigation that
3 compels disclosure of any information or items designated in this Action as
4 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,” that Party must:

5 (a) promptly notify in writing the Designating Party. Such notification
6 shall include a copy of the subpoena or court order;

7 (b) promptly notify in writing the party who caused the subpoena or
8 order to issue in the other litigation that some or all of the material covered by the
9 subpoena or order is subject to this Stipulated Protective Order. Such notification shall
10 include a copy of this Stipulated Protective Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be
12 pursued by the Designating Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the
14 subpoena or court order shall not produce any information designated in this action as
15 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” before a determination by the
16 Court from which the subpoena or order issued, unless the Party has obtained the
17 Designating Party’s permission. The Designating Party shall bear the burden and
18 expense of seeking protection in that court of its confidential material and nothing in
19 these provisions should be construed as authorizing or encouraging a Receiving Party
20 in this Action to disobey a lawful directive from another court.

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22 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
23 IN THIS LITIGATION

24 (a) The terms of this Stipulated Protective Order are applicable to
25 information produced by a Non-Party in this Action and designated as
26 “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.” Such information produced
27 by Non-Parties in connection with this litigation is protected by the remedies and relief
28 provided by this Stipulated Protective Order. Nothing in these provisions should be

1 construed as prohibiting a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to
3 produce a Non-Party's confidential information in its possession, and the Party is
4 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
5 information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-
7 Party that some or all of the information requested is subject to a confidentiality
8 agreement with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated
10 Protective Order in this Action, the relevant discovery request(s), and a reasonably
11 specific description of the information requested; and

12 (3) make the information requested available for inspection by
13 the Non-Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this Court
15 within 14 days of receiving the notice and accompanying information, the Receiving
16 Party may produce the Non-Party's confidential information responsive to the discovery
17 request. If the Non-Party timely seeks a protective order, the Receiving Party shall not
18 produce any information in its possession or control that is subject to the confidentiality
19 agreement with the Non-Party before a determination by the court. Absent a court order
20 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
21 in this Court of its Protected Material.

22
23 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Stipulated Protective
2 Order, and (d) request such person or persons to execute the “Acknowledgment and
3 Agreement to Be Bound” that is attached hereto as Exhibit A.
4

5 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
6 PROTECTED MATERIAL

7 When a Producing Party gives notice to Receiving Parties that certain
8 inadvertently produced material is subject to a claim of privilege or other protection,
9 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
10 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
11 may be established in an e-discovery order that provides for production without prior
12 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
13 parties reach an agreement on the effect of disclosure of a communication or
14 information covered by the attorney-client privilege or work product protection, the
15 parties may incorporate their agreement in the Stipulated Protective Order submitted to
16 the Court.
17

18 12. MISCELLANEOUS

19 12.1 Right to Further Relief. Nothing in this Stipulated Protective Order
20 abridges the right of any person to seek its modification by the Court in the future.

21 12.2 Right to Assert Other Objections. By stipulating to the entry of this
22 Stipulated Protective Order no Party waives any right it otherwise would have to object
23 to disclosing or producing any information or item on any ground not addressed in this
24 Stipulated Protective Order. Similarly, no Party waives any right to object on any ground
25 to use in evidence of any of the material covered by this Stipulated Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal any
27 Protected Material must comply with Civil Local Rule 79-5. Protected Material may
28 only be filed under seal pursuant to a court order authorizing the sealing of the specific

1 Protected Material at issue. If a Party's request to file Protected Material under seal is
2 denied by the Court, then the Receiving Party may file the information in the public
3 record unless otherwise instructed by the Court.
4

5 13. FINAL DISPOSITION

6 After the final disposition of this Action, as defined in paragraph 4, within 60
7 days of a written request by the Designating Party, each Receiving Party must return all
8 Protected Material to the Producing Party or destroy such material. As used in this
9 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
10 summaries, and any other format reproducing or capturing any of the Protected
11 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
12 must submit a written certification to the Producing Party (and, if not the same person
13 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
14 category, where appropriate) all the Protected Material that was returned or destroyed
15 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
16 compilations, summaries or any other format reproducing or capturing any of the
17 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
18 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
19 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
20 work product, and consultant and expert work product, even if such materials contain
21 Protected Material. Any such archival copies that contain or constitute Protected
22 Material remain subject to this Stipulated Protective Order as set forth in Section 4
23 (DURATION).
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25 14. Any violation of this Stipulated Protective Order may be punished by any and all
26 appropriate measures including, without limitation, contempt proceedings and/or
27 monetary sanctions.
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that I
have read in its entirety and understand the Stipulated Protective Order that was issued
by the United States District Court for the Central District of California on _____
[date] in the case of *Fred Leeds Properties, et al. v. Philadelphia Indemnity Insurance
Company*, United States District Court, Central District Case No.: 2:20-cv-06335-
SVW-MAA. I agree to comply with and to be bound by all the terms of this Stipulated
Protective Order and I understand and acknowledge that failure to so comply could
expose me to sanctions and punishment in the nature of contempt. I solemnly promise
that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Stipulated Protective Order.

I further agree to submit to the jurisdiction of the United States District Court for
the Central District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this
action. I hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with this
action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____