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14 Attorneys for Plaintiff and Counterdefendant
 15 CROWN CHARLESTON ASSOCIATES, LLC
 16 and Third-Party Defendants CRD ASSOCIATES, LLC and
 17 CROWN REALTY AND DEVELOPMENT, INC.

18 **UNITED STATES DISTRICT COURT FOR THE**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 CROWN CHARLESTON
 21 ASSOCIATES, LLC, a Delaware limited
 22 liability company,

23 Plaintiff,

24 vs.

25 SMARKEL, LLC, a South Carolina
 26 limited liability company; DANA, LLC,
 27 a South Carolina limited liability
 28 company; RBG 70, LLC, a South
 Carolina limited liability company; SHG
 70, LLC, a South Carolina limited
 liability company; and DOES 1 through
 100, inclusive,

Defendants.

**AND RELATED COUNTERCLAIMS
 AND THIRD-PARTY CLAIMS**

Case No. SACV 08-00419 AG(RNBx)

[Assigned for all purposes to the Hon.
 Andrew J. Guilford]

**[PROPOSED] PROTECTIVE
 ORDER**

***REFERRED TO MAGISTRATE
 JUDGE ROBERT N. BLOCK***

1 Upon review and consideration of the stipulation of the parties, and upon a
2 determination of good cause, the parties’ Stipulation for Entry of a Protective Order
3 is hereby granted as follows:

4
5 1. Defendants and Counterclaimants Smarkel, LLC; Dana, LLC; RBG
6 70, LLC; and SHG 70, LLC (collectively “Smarkel”) served requests for production
7 of documents on Crown Charleston Associates, LLC; CRD Associates, LLC; and
8 Crown Realty and Development, Inc. (collectively “Crown Entities”). Compliance
9 with these requests for production will require the Crown Entities to produce
10 confidential, non-public financial information and analysis concerning the Crown
11 Entities and their affiliated individuals and entities, which the Crown Entities, in
12 good faith, consider to be confidential and proprietary. Smarkel also served
13 subpoenas on Kenneth Chirba, Raquel Castro, and Phillip Rhiner, Crown’s contacts
14 at Wachovia Bank, N.A. Compliance with these subpoenas may require the
15 subpoenaed individuals to produce confidential, non-public financial information
16 and analysis concerning the Crown Entities and their affiliated individuals and
17 entities, which the Crown Entities, in good faith, consider to be confidential and
18 proprietary. The Crown Entities have also served requests for production of
19 documents on Smarkel, which may also require Smarkel to produce confidential,
20 non-public financial information and analysis.

21
22 2. In responding to document requests and subpoenas, whether made
23 formally or informally, any party may designate documents “Confidential
24 Material.” The party shall designate information “Confidential Material” only
25 when that party has a good faith belief that the information so designated is
26 confidential within the meaning of Rule 26(c) of the Federal Rules of Civil
27 Procedure or other applicable law. Material or information derived from, and
28

1 testimony based upon review of, Confidential Material is also considered
2 Confidential Material.

3
4 3. The designation of materials as Confidential Material by the parties to
5 this litigation shall be made as follows:

6
7 (a) By imprinting the words “Confidential – Subject to Protective Order in
8 United States District Court Case No. SACV 08-00419 AG(RNBx)” on the face of
9 each page of a document so designated or in a similarly conspicuous location for
10 non-document materials;

11
12 (b) For electronic format materials, by imprinting the words “Confidential
13 – Subject to Protective Order in United States District Court Case No. SACV 08-
14 00419 AG(RNBx)” on the face of each page of the electronic document so
15 designated, by imprinting the words “Confidential – Subject to Protective Order in
16 United States District Court Case No. SACV 08-00419 AG(RNBx)” in a
17 conspicuous place on the media itself (e.g., the disk or CD), or by designating the
18 production as “Confidential and subject to the Protective Order” in the transmittal
19 cover letter.

20
21 4. Access to Confidential Material, and to any portion of any transcript,
22 brief, affidavit, memorandum or other paper that contains, reveals or refers to
23 Materials so designated, shall be limited to:

24
25 a. Outside counsel of record for the parties and insurers for the
26 parties;

1 b. The clerical employees of such counsel of record (including
2 secretaries, legal assistants, and clerks) actually assisting such counsel in
3 preparation of this case;

4
5 c. Non-party experts or consultants retained to assist counsel of record
6 in this case; *provided, however*, that such experts or consultants have access
7 to such Material only to the extent necessary to perform the duties for which
8 they have been retained;

9
10 d. The parties or officers and employees of the parties whose access to
11 the Materials is reasonably and in good faith necessary for the prosecution or
12 defense of this action;

13
14 e. Court reporters involved in transcribing depositions or other
15 proceedings in this litigation;

16
17 f. Deponents and trial witnesses during the course of their depositions
18 or trial testimony; *provided, however*, that counsel for the designating party
19 shall be informed that the deponent or trial witness will be shown such
20 Material before the designated Material is shown to the deponent or trial
21 witness, to give counsel for the designating party an opportunity to object.

22
23 g. The Court and related officials involved in this case, including
24 judges, commissioners, Court-appointed referees, members of the jury, if
25 any, in the case, and other Court personnel.

26
27 h. Mediators, settlement judges or other persons appointed by the
28 Court or selected by the parties to assist in the resolution of this action; and

1 i. Any other individuals as authorized by Court or consented to in
2 writing by the parties.

3
4 5. Except for the Court and Court personnel, each recipient of the
5 Confidential Material shall maintain such Material in a secure, safe area and shall
6 exercise the same standard of care with respect to the storage, custody, use, and
7 dissemination of such Material as is exercised by the recipient with respect to its
8 own confidential and proprietary material. Although there is no requirement to
9 keep the documents in a locked storage area.

10
11 6. Except upon consent of the designating party or upon order of the
12 Court, any and all Confidential Materials produced, served or otherwise made
13 available by the designating party to another party during the course of this action,
14 together with all reproductions, copies, abstracts, indices, or summaries of those
15 Materials, shall be used only for preparation and presentation of this action and for
16 no other purpose whatsoever. Without limiting the foregoing, the receiving party
17 shall not use any Materials for any business purposes whatsoever, including
18 (without limitation) for developing business strategies or for the solicitation of any
19 customer (for business purposes or otherwise).

20
21 7. Within fifteen (15) days after final determination or settlement of this
22 action, all Materials designated as Confidential that have been produced by the
23 designating party to another party during the course of this action shall be delivered
24 to counsel for the designating party, and all reproductions, copies, abstracts,
25 indices, summaries or any other embodiment of such Materials shall either be
26 delivered to counsel for the designating party or destroyed. The designating party
27 shall be entitled to receive, upon request, a declaration signed by the
28 delivering/destroying party setting forth that any and all such Materials have been

1 delivered and/or destroyed, as applicable and as permitted. Notwithstanding the
2 above, counsel for each party may retain one copy of such Material to maintain a
3 complete file of the litigation; *provided, however*, that the Material is maintained in
4 accordance with paragraph 5 above, and that all further copies of Confidential
5 Material shall be destroyed or delivered to counsel for the designating party.
6

7 8. If any Confidential Material is disclosed to any person other than in the
8 manner authorized by this Order, the party responsible for the disclosure must
9 immediately bring all pertinent facts relating to such disclosure to the attention of
10 the opposing party and the designating party, and without prejudice to the rights
11 and remedies of the designating party, make every effort to prevent further
12 unauthorized disclosure on its own part or on the part of the recipient of such
13 Material.
14

15 9. Nothing in this Protective Order shall preclude any party to the lawsuit
16 or their attorneys from showing Confidential Materials to an individual who
17 prepared or personally received the material at the time it was created.
18

19 10. Nothing in this Order prohibits any party to this Order, or third party,
20 from refusing to disclose or produce trade secrets or confidential information not
21 relevant to, or likely to lead to the discovery of evidence relevant to, the proof of, or
22 defense against, a material element of a cause of action in the litigation. The Court
23 retains the right to rule independently on any such assertion of privilege.
24

25 11. Nothing in this Order shall be construed as requiring disclosure of
26 materials privileged under the attorney/client privilege, the attorney work product
27 doctrine, or any applicable privilege.
28

1 12. Nothing in this Protective Order shall be construed as a waiver by a
2 party of any objections that might be raised as to the admissibility at trial of any
3 evidentiary materials.

4
5 13. The fact that materials have been designated as Confidential shall have
6 no bearing on whether the materials are admissible into evidence.

7
8 14. By approving the form of this Protective Order the parties do not
9 concede that any Confidential Material is properly the subject of any protective
10 order. Entry of this Protective Order shall be without prejudice to any party's
11 motion for relief from or modification of the provisions hereof, or to any other
12 motion relating to the production, exchange, or use of any document or other
13 information in the course of this action, provided however, that no such motion
14 shall be made after entry of a final judgment or settlement. If a party disagrees with
15 a producing party's designation of information as Confidential, or disputes the
16 limitations on access to be accorded such information under this Protective Order,
17 the party contesting the designation or restriction on access shall provide to the
18 producing party written notice of its disagreement and specifically identify the
19 information or restriction on access in dispute, and state the reasons why the party
20 believes such information is not Confidential. If, despite good faith effort, the
21 dispute cannot be resolved informally by the parties within fifteen (15) days of the
22 producing party's receipt of the written notice, the party contesting the designation
23 or restriction on access may seek relief from the Court. The parties do not intend to
24 change the legal burden of demonstrating the confidentiality of such documents.
25 Pending the Court's ruling, the party contesting the designation shall continue to
26 treat the information in accordance with the "Confidential" designation. Any
27 motion brought pursuant to this paragraph must be made in strict compliance with
28 Local Rules 37-1 and 37-2 (including the Joint Stipulation requirement).

1 15. No provision of this Protective Order shall require any person or
2 corporation not a party to this action to respond to any discovery request, except as
3 may otherwise be required by law.
4

5 16. The terms of this order shall survive any final disposition of this case,
6 unless otherwise ordered by the Court. The Court shall retain jurisdiction to
7 enforce or modify this Protective Order.
8

9 17. The Protective Order is subject to revocation or modification by order
10 of the Court upon written stipulation of the Parties, or upon regularly noticed
11 motion and hearing.
12

13 18. To the extent any of the Crown Entities believes that any document
14 contains proprietary information, it shall be entitled to seek an order from this Court
15 that the material be filed under seal.
16

17 19. Nothing in this Order shall be construed as authorizing a party to
18 disobey a lawful subpoena in another action.
19

20 IT IS SO ORDERED:

21
22 Dated: November 21, 2008



23 _____
24 Robert N. Block
25 Magistrate Judge, United States District Court
26
27
28