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13 Attorneys for Plaintiffs Lewis Booth
14 and Stephen Drews

15 **UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

17 LEWIS BOOTH, as Trustee for the Booth Trust
 18 dated 11-20-96, and STEPHEN DREWS, on
 19 behalf of themselves and all others similarly
 20 situated,

21 Plaintiffs,

22 v.

23 STRATEGIC REALTY TRUST, INC. (f/k/a
 24 TNP STRATEGIC RETAIL TRUST, INC.),
 25 THOMPSON NATIONAL PROPERTIES, LLC,
 26 TNP STRATEGIC ADVISOR, LLC, TNP
 27 SECURITIES, LLC, ANTHONY W.
 28 THOMPSON, CHRISTOPHER S. CAMERON,
 JAMES R. WOLFORD, JACK R. MAURER,
 PHILLIP I. LEVIN, ARTHUR M. FRIEDMAN,
 JEFFREY S. ROGERS, ROBERT N. RUTH,
 and PETER K. KOMPANIEZ

Defendants.

CASE NO: 13-CV-04921-JST

**STIPULATED ORDER RE: DISCOVERY OF
 ELECTRONICALLY STORED
 INFORMATION**

1 **1. PURPOSE**

2 This Order will govern discovery of electronically stored information (“ESI”) in this case as a
3 supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the Discovery of
4 Electronically Stored Information, and any other applicable orders and rules.

5 **2. COOPERATION**

6 The parties are aware of the importance the Court places on cooperation and commit to
7 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the Discovery
8 of ESI.

9 **3. LIAISON**

10 The parties have identified liaisons to each other who are and will be knowledgeable about and
11 responsible for discussing their respective ESI. Each e-discovery liaison will be, or have access to
12 those who are, knowledgeable about the technical aspects of e-discovery, including the location, nature,
13 accessibility, format, collection, search methodologies, and production of ESI in this matter. The parties
14 will rely on the liaisons, as needed, to confer about ESI and to help resolve disputes without court
15 intervention.

16 **4. PRESERVATION**

17 The parties have discussed their preservation obligations and needs and agree that preservation
18 of potentially relevant ESI will be reasonable and proportionate. To reduce the costs and burdens of
19 preservation and to ensure proper ESI is preserved, the parties agree that:

- 20 a) Only ESI created or received between December 2007 and the present will be preserved;
- 21 b) The parties intend to exchange a list of the types of ESI they believe should be preserved
22 and the custodians, or general job titles or descriptions of custodians, for whom they
23 believe ESI should be preserved, e.g., “HR head,” “scientist,” and “marketing manager.”
The parties shall add or remove custodians as reasonably necessary;
- 24 c) The parties will agree on the number of custodians per party for whom ESI will be
25 preserved;
- 26 d) These data sources are not reasonably accessible because of undue burden or cost
27 pursuant to Fed. R. Civ. P. 26(b)(2)(B) and ESI from these sources will be preserved but
28 not searched, reviewed, or produced:

- 1 1. Plaintiffs are not yet aware of any data sources that are not reasonably accessible
2 under Fed. R. Civ. P. 26(b)(2)(B), but will immediately update counsel for
3 defendants should they learn otherwise.
- 4 2. Counsel for all defendants are not yet aware of any data sources not reasonably
5 accessible under Fed. R. Civ. P. 26(b)(2)(B), but will immediately update the parties
6 should they learn otherwise.
- 7 e) Among the sources of data the parties agree are not reasonably accessible, the parties
8 agree not to preserve the following: Not applicable.
- 9 f) In addition to the agreements above, the parties agree data from these sources (a) could
10 contain relevant information but (b) under the proportionality factors, should not be
11 preserved: Not applicable.

10 **5. SEARCH**

11 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if
12 appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is
13 subject to production in discovery and filter out ESI that is not subject to discovery.

14 **6. PRODUCTION FORMATS**

15 The parties agree to produce documents in accordance with the Protocol Governing the
16 Production of Electronically Stored Information attached as Exhibit A. If particular documents warrant
17 a different format or if any party contends that production in accordance with Exhibit A will cause
18 undue burden or expense, the parties will cooperate in good faith to arrange for the mutually acceptable
19 form of production of such documents. The parties agree in any event not to degrade the searchability
20 of documents as part of the document production process.

21 **7. PHASING**

22 When a party propounds discovery requests pursuant to Fed. R. Civ. P. 34, the parties agree to
23 prioritize production of documents and records from sources most likely to contain relevant and
24 discoverable information. Following the initial production, the parties will continue to prioritize the
25 order of subsequent productions.

26 **8. DOCUMENTS PROTECTED FROM DISCOVERY**

- 27 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or work-product-
28 protected document, whether inadvertent or otherwise, is not a waiver of privilege or
protection from discovery in this case or in any other federal or state proceeding. For
example, the mere production of privileged or work-product-protected documents in this

1 case as part of a mass production is not itself a waiver in this case or in any other federal
2 or state proceeding.

3 b) The parties have agreed upon a process pursuant to Fed. R. Civ. P. 26(b)(5) and reserve
4 rights to assert privilege as follows:

5 i) If a producing party has a good faith belief that a privileged document has been
6 inadvertently produced, it shall promptly notify the receiving parties of the claim
7 of privilege;

8 ii) Upon receipt of any notice claiming privilege with respect to a produced
9 document, all other parties (regardless of whether they agree with the producing
10 party's claim of privilege) shall promptly:

11 a. Use reasonable efforts to destroy or sequester all copies of the inadvertently
12 produced documents or material in such party's possession, custody or
13 control, and notify the disclosing party that they have done so; and

14 b. Notify the producing party that they have taken reasonable steps to retrieve
15 and destroy or sequester the inadvertently produced documents or material
16 from other persons, if any, to whom such documents or material have been
17 provided, consistent with Rule 26(b)(5)(B).

18 iii) To the extent a receiving party disputes the producing party's claim of privilege,
19 the receiving party shall notify the producing party of its position within 14 days
20 of receiving the producing party's notice the dispute. Within 14 days of
21 receiving notification of the dispute, the parties shall meet and confer in an effort
22 to resolve their disagreement. If the parties are unable to resolve their
23 disagreement, the parties may submit the issue to the Court for a determination,
24 and may submit any document(s) in dispute under seal in compliance with Rule
25 26(b)(5)(B).

26 c) Communications involving trial counsel that post-date the filing of the complaint need
27 not be placed on a privilege log. Communications may be identified on a privilege log
28 by category, rather than individually, if appropriate.

1 **9. MODIFICATION**

2 This Stipulated Order may be modified by a Stipulated Order of the parties or by the Court for
3 good cause shown.

4
5 **IT IS SO STIPULATED**, through Counsel of Record.

6
7 Dated: August 27, 2014

Respectfully submitted,

8 **GIRARD GIBBS LLP**

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10 Dena C. Sharp

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20 -and-

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Additional Plaintiffs' Counsel

7
8 Dated: August 27, 2014

DLA PIPER LLP (US)

9 /s/ David Priebe

10 David Priebe

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20
21 Dated: August 27, 2014

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22 /s/ Gregory J. Sherwin

23 Gregory J. Sherwin

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1 Dated: August 27, 2014

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2 /s/ James N. Kramer

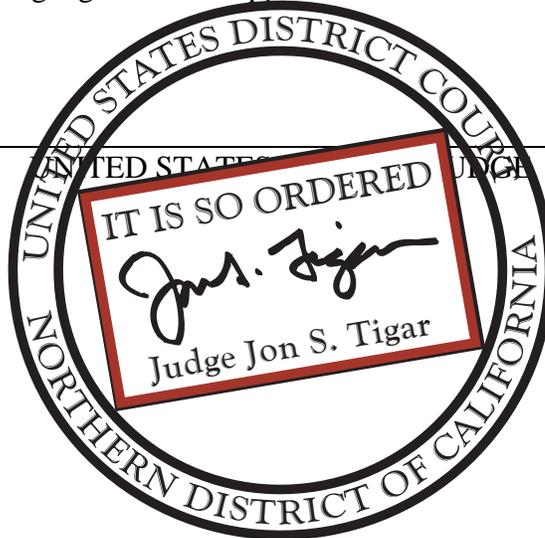
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**Counsel for Christopher S. Cameron, James R. Wolford,
and Jack R. Maurer**

12 **IT IS ORDERED** that the forgoing Agreement is approved.

14 Dated: August 28, 2014



1 EXHIBIT A

2 **PROTOCOL GOVERNING THE PRODUCTION OF**
3 **ELECTRONICALLY STORED INFORMATION (ESI)**

4 **Production of Data:**

5 ESI is to be produced in 300 DPI Group IV Monochrome Tagged Image File Format (.TIFF or .TIF)
6 files. TIFF files shall be produced in single-page format along with image load files (.DII filed and
7 .OPT file and .LFP file). All documents are to be provided with multi-page searchable text (.TXT) files.
8 These text files and image load files should indicate page breaks, to the extent possible. To the extent
9 produced material contains information subject to a claim of privilege, it shall be produced in the form
10 of a redacted .TIFF image and with OCR of the unredacted portion of the image.

11 During the process of converting ESI from the electronic format of the application in which the ESI is
12 normally created, viewed and/or modified to TIFF, metadata values should be extracted and produced in
13 a load file (“metadata load file”).

14 To the extent they are available, the metadata values that are to be extracted and produced in the
15 metadata load files (.DAT file using Concordance standard delimiters and .IDX file) are:

16 **Metadata from Email:**

- 17 Email Subject
- 18 Email Author
- 19 Email Recipient
- 20 Email CC
- 21 Email BCC
- 22 Email Received Date
- 23 Email Received Time
- 24 Email Sent Date
- 25 Email Sent Time

26 **Metadata from Electronic Files:**

- 27 File Name
- 28 File Author
- File Created Date
- File Created Time
- File Modified Time

1 File Extension

2 Data for both Email and Electronic Files

3 Custodian or Source

4 Original Path

5 MD5 Hash

6 To the extent reasonably available, the “Custodian” “Source” or “Original Path” field with
7 respect to ESI gathered from an individual’s hard drive will provide metadata sufficient to
8 identify the custodian from whose hard drive such ESI has been gathered.

8 For all documents (for example, email) that contained an attachment, to the extent available, the
9 following fields should be produced as part of the metadata load file to provide the parent/child or
10 parent/sibling relationship.

10 Production Number Begin

11 Production Number End

12 Production Attachment Range Number Begin

13 Production Attachment Range Number End

14 Attachment Name

15 Production Doc Page Count

16 The parties may de-duplicate identical ESI on a global scale, subject to the parties’ good faith agreement
17 to provide any requesting party information about other custodians who possessed or had access to any
18 given ESI record that would be available but for the deduplication.

19 **Production of Excel and Access ESI**

20 Unless such materials contain privileged information, MS-Excel spreadsheets and MS-Access databases
21 shall be produced in native format. The metadata load file shall contain a link to the produced MS-
22 Excel spreadsheets and MS-Access database via data values called “Native Link.” The Native Link
23 values should contain the full directory path and file name of the MS-Excel spreadsheet and MS-Access
24 database as contained in the produced media.

24 Production of responsive data contained in relational databases other than MS-Access should be
25 achieved via a report or export of such data to MS-Excel spreadsheets that will be produced.

25 Producing native MS-Excel files and MS-Access databases should be accompanied by a reference file
26 containing the name of the file and MD5 hash value for each produced file. To the extent such material
27 contains information subject to a claim of privilege, it shall be produced in the form of a redacted .TIFF
28 image and with OCR of the unredacted portion of the image.

1 **Production of Audio Files**

2 Audio files are to be produced in the native audio file format in which they were maintained in the
3 ordinary course of business. Produced native audio files should be accompanied by a reference file
4 containing the name of the MD5 hash value for each produced file. If the audio files are maintained in a
non-standard format, they should be produced in MP3 format.

5 **Bates Numbering**

6 Bates number and any confidentiality and designation should be electronically branded on each
7 produced TIFF image ESI. Bates numbers should consist of consecutive characters or connectors
8 without spaces.
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