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10 *Association*

11 **UNITED STATES DISTRICT COURT**  
12 **DISTRICT OF NEVADA**

13 DITECH FINANCIAL SERVICES LLC f/k/a  
14 GREEN TREE SERVICING LLC, and;  
15 FEDERAL NATIONAL MORTGAGE  
16 ASSOCIATION,

Case No.: 3:16-cv-00194-MMD-WGC

**STIPULATED PROTECTIVE ORDER**

17 Plaintiffs,

18 vs.

19 HIGHLAND RANCH HOMEOWNERS  
20 ASSOCIATION; TBR I, LLC; AIRMOTIVE  
21 INVESTMENTS, LLC,

22 Defendants.

23 Ditech Financial Services LLC and defendants TBR I LLC, Airmotive Investments LLC, and  
24 Highland Ranch Homeowners Association, by and through their undersigned counsel, stipulate to the  
25 following protective order:

26 To expedite the flow of discovery, facilitate the prompt resolution of disputes over  
27 confidentiality, adequately protect material claimed to be confidential, and ensure protection is  
28 afforded only to material so designated, it is, pursuant to the Court's authority under Federal Rule of  
Civil Procedure 26(c), **ORDERED** this Protective Order shall govern the disclosure, handling and  
disposition of documents in this litigation as follows:

- 1. **Application.**

1           1.1 This Protective Order shall govern any document, information or other  
2 material that is designated as containing "Confidential Information" as defined herein, and is  
3 produced in connection with this litigation by any person or entity (the **producing party**), whether in  
4 response to a discovery request, subpoena or otherwise, to any other person or entity (the **receiving**  
5 **party**) regardless of whether the person or entity producing or receiving such information is a party  
6 to this litigation.

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8           2.       **Definitions.**

9           2.1 Confidential Information. "Confidential Information" shall mean and include,  
10 without limitation, any non-public information that concerns or relates to the following areas:  
11 confidential proprietary information, trade secrets, practices and procedures, personal financial  
12 information, commercial, financial, pricing, budgeting, and/or accounting information, information  
13 about existing and potential customers, marketing studies, performance projections, business  
14 strategies, decisions and/or negotiations, personnel compensation, evaluations and other employment  
15 information, and confidential proprietary information about affiliates, parents, subsidiaries and third-  
16 parties with whom the parties to this action have or have had business relationships.

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18           2.2 Documents. As used herein, the term "documents" includes all writings,  
19 records, files, drawings, graphs, charts, photographs, e-mails, video tapes, audio tapes, compact discs,  
20 electronic messages, other data compilations from which information can be obtained and other  
21 tangible things subject to production under the Federal Rules of Civil Procedure.

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23           3.       **Initial Designation.**

24           3.1 Good Faith Claims. Claims of confidentiality will be made only with respect  
25 to documents, other tangible things and information that the asserting party has a good faith belief are  
26 within the definition set forth in subparagraph 2.1 of this Protective Order. Objections to such claims  
27 made pursuant to paragraph 5, below, shall also be made only in good faith.



1           3.4     Inspection of Documents. In the event a party elects to produce files and  
2 records for inspection and the requesting party elects to inspect them, no designation of Confidential  
3 Information needs to be made in advance of the inspection. For purposes of such inspection, all  
4 material produced shall be considered as Confidential Information. If the inspecting party selects  
5 specified documents to be copied, the producing party shall designate Confidential Information in  
6 accordance with subparagraph 3.2 at the time the copies are produced.

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8           3.5     Deposition Transcripts. The party asserting confidentiality shall state on the  
9 record the portions it deems confidential. The failure to designate testimony on the record as  
10 confidential shall be a waiver unless the designating party notifies all other parties and files a motion  
11 to designate the testimony as confidential within 5 days of the notification.

12           3.6     Inadvertent Failure to Designate. Inadvertent failure to identify documents or  
13 things as "Confidential" pursuant to this Protective Order shall not constitute a waiver of any  
14 otherwise valid claim for protection, provided that the provisions of this paragraph are satisfied. If  
15 the designating party discovers that information should have but was not designated "Confidential"  
16 or of the designating party receives notice that would enable the designated party to learn that it has  
17 disclosed such information, the designating party must immediately notify all other parties. In such  
18 event, within thirty (30) days of notifying all other parties, the designating parties must also provide  
19 copies of the "Confidential" information designated in accordance with this Protective Order. After  
20 receipt of such re-designated information, the "Confidential" information shall be treated as required  
21 by this Protective Order, and the receiving party(ies) shall promptly, and in no event more than  
22 fourteen (14) calendar days from the receipt of the re-designated information, return to the designated  
23 party all previously produced copies of the same unlegended documents or things. The designating  
24 party and the parties may agree to alternative means. The receiving party(ies) shall receive no  
25 liability, under this Protective Order or otherwise, for any disclosure of information contained in  
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1 unlegended documents or things occurring before the receiving party was placed on notice of the  
2 designating party's claims of confidentiality.

3 4. **Designations by Another Party.**

4 4.1 Notification of Designation. If a party other than the producing party believes  
5 that a producing party has produced a document that contains or constitutes Confidential Information  
6 of the non-producing party, the non-producing party may designate the document as Confidential  
7 Information by so notifying all parties in writing within fourteen (14) days of service of the document.  
8

9 4.2 Return of Documents; Non-disclosure. Whenever a party other than the  
10 producing party designates a document produced by a producing party as Confidential Information  
11 in accordance with subparagraph 4.1, each party receiving the document shall either add the  
12 Confidential Information designation in accordance with subparagraph 3.2 or substitute a copy of the  
13 document bearing such designation for each copy of the document produced by the producing party.  
14 Each party shall destroy all undesignated copies of the document or return those copies to the  
15 producing party, at the direction of the producing party. No party shall disclose a produced document  
16 to any person, other than the persons authorized to receive Confidential Information under  
17 subparagraph 7.1, until after the expiration of the fourteen (14) day designation period specified in  
18 subparagraph 4.1. If during the fourteen (14) day designation period a party discloses a produced  
19 document to a person authorized to receive Confidential Information under subparagraph 7.1, and  
20 that document is subsequently designated as Confidential Information in accordance with  
21 subparagraph 4.1, the disclosing party shall cause all copies of the document to be destroyed or  
22 returned to the producing party, at the direction of the producing party. The party may thereafter  
23 disclose a copy of the document that has been marked as Confidential Information by the designating  
24 party, in accordance with subparagraphs 3.2 and 7.1.  
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27 5. **Objections to Designations.** Any party objecting to a designation of Confidential  
28 Information, including objections to portions of designations of multi-page documents, shall notify

1 the designating party and all other parties of the objection in writing up to and through trial of the  
2 matter. This notice must specifically identify each document that the objecting party in good faith  
3 believes should not be designated as Confidential Information and provide a brief statement of the  
4 grounds for such belief. In accordance with the Federal Rules of Civil Procedure governing discovery  
5 disputes, the objecting and the designating parties thereafter shall confer within ten (10) days after  
6 the date of such objection in an attempt to resolve their differences. If the parties are unable to resolve  
7 their differences, the objecting party shall have twenty one (21) days after the conference concludes  
8 to file with the Court a motion to remove the Confidential Information. If an objection is served  
9 within forty-two (42) days of trial, the objecting party must file its motion to remove the Confidential  
10 Information designation within half of the remaining time before trial, and the meet-and-confer period  
11 shall be shortened accordingly. Where a party authored, created, owns, or controls a document,  
12 information or other material that another party designates as Confidential Information, the party that  
13 authored, created, owns, or controls the Confidential Information may so inform the objecting party  
14 and thereafter shall also be considered a designating party for purposes of this paragraph.  
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17 All documents, information and other materials initially designated as Confidential  
18 Information shall be treated as such in accordance with this Protective Order unless and until the  
19 Court rules otherwise, except for deposition transcripts and exhibits initially considered as containing  
20 Confidential Information under subparagraph 3.5, which will lose their confidential status after  
21 twenty-one (21) days unless so designated as Confidential Information. If the Court rules that a  
22 designation should not be maintained as to a particular document, the producing party shall, upon  
23 written request by a party, provide that party a copy of that document without the designation  
24 described in subparagraph 3.2.  
25

26 If an objecting party elects not to make such a motion with respect to documents within twenty  
27 one (21) days after the conference, information or other materials to which an objection has been  
28 made, the objection shall be deemed withdrawn. The designating party shall have twenty one (21)

1 days to respond to the objecting party's motion. If no response is filed by the designating party within  
2 twenty one (21) days, the designating party shall be deemed to have consented to the objecting party's  
3 motion pursuant to LR 7-2(d).

4 6. **Custody.** All Confidential Information and any and all copies, extracts and summaries  
5 thereof, including memoranda relating thereto, shall be retained by the receiving party in the custody  
6 of counsel of record, or by persons to whom disclosure is authorized under subparagraph 7.1.

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8 7. **Handling Prior to Trial.**

9 7.1 Authorized Disclosures. Confidential Information shall be disclosed by the  
10 receiving party only to the following persons:

- 11 a. Counsel for the parties in this litigation, including their associates,  
12 clerks, paralegals, and secretarial personnel;
- 13 b. Qualified persons taking testimony in this litigation involving such  
14 Confidential Information, and necessary stenographic, videotape and  
15 clerical personnel;
- 16 c. Experts and their staff who are retained by counsel as expert witnesses  
17 for a party in this litigation;
- 18 d. Experts and their staff who are consulted by counsel for a party in this  
19 litigation;
- 20 e. Parties to this litigation, limited to the named party and, if that party is  
21 a corporate entity, a limited number of employees of the corporate  
22 entity and its insurers;
- 23 f. Designated in-house counsel and a limited number of assistants,  
24 administrative or otherwise;
- 25 g. Outside vendors employed by counsel for copying, scanning and  
26 general handling of documents;
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- 1 h. Any person of whom testimony is taken regarding the Confidential
- 2 Information, except that such person may only be shown Confidential
- 3 Information during his/her testimony, and may not retain a copy of such
- 4 Confidential Information; and
- 5 i. This Court and this Court's staff, subject to the Court's processes for
- 6 filing materials under seal.
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8 Such disclosures are authorized only to the extent necessary to investigate, prosecute, or

9 defend the litigation.

10 Confidential Information may not be disclosed to persons under subparagraphs (c) or (d) until

11 the receiving party has obtained a written acknowledgment from the person receiving Confidential

12 Information, in the form of the Declaration attached hereto as Exhibit A, that he or she has received

13 a copy of this Protective Order and has agreed to be bound by it. A party who discloses Confidential

14 Information in accordance with subparagraph 7.1 shall retain the written acknowledgment from each

15 person receiving Confidential Information, shall maintain a list of all persons to whom a receiving

16 party has disclosed Confidential Information and identify what documents have been disclosed, and

17 shall furnish the written acknowledgments and disclosure list to opposing counsel as follows: (i) for

18 a person under subparagraph (c), within thirty (30) days after the person signs the Declaration; and

19 (ii) for a person under subparagraph (d), within thirty (30) days after the matter is finally concluded.

20 Disclosure of Confidential Information to this Court, including judicial staff, shall be made in

21 accordance with subparagraph 7.4 of this Protective Order.

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23

24 7.2 Unauthorized Disclosures. All persons receiving Confidential Information

25 under the terms of this Protective Order are under the jurisdiction of the state courts and U.S. federal

26 courts located in Nevada for all matters arising from the improper disclosure or use of such

27 information. If Confidential Information is disclosed to any person other than in the manner

28 authorized by this Protective Order, the party or person responsible for the disclosure, and any other



1 party or person who is subject to this Protective Order and learns of such disclosure, shall immediately  
2 bring such disclosure to the attention of the designating party. Without prejudice to other rights and  
3 remedies of the designating party, the responsible party or person shall make every effort to obtain  
4 and return the Confidential Information and to prevent further disclosure on its own part or on the  
5 part of the person who was the unauthorized recipient of such information.

6 7.3 Court Filings. In the event any Confidential Information must be filed with the  
7 Court prior to trial, the proposed filing shall be accompanied by a motion to file the Confidential  
8 Information under seal that complies with Local Rule 10-5(b) and a proposed order, and the  
9 application and proposed order shall be directed to the judge to whom the Confidential Information  
10 is directed. This provision is applicable to briefs, memoranda, and other filings which quote,  
11 summarize, or describe Confidential Information.  
12

13 8. **Care in Storage**. Any person in possession of Confidential Information produced by  
14 another party shall exercise reasonable and appropriate care with regard to the storage, custody,  
15 copying, and use of such information to ensure that the confidential and sensitive nature of same is  
16 maintained.  
17

18 9. **Handling During Trial**. Confidential Information that is subject to this Order may be  
19 marked and used as trial exhibits by either party, subject to terms and conditions as imposed by the  
20 Court upon application by any party.

21 10. **No Implied Waivers**. This Protective Order shall not be interpreted as a waiver of the  
22 right to object, under applicable law, to the furnishing of information in response to discovery requests  
23 or to object to a requested inspection of documents or facilities. Parties producing Confidential  
24 Information in this litigation are doing so only pursuant to the terms of this Protective Order. The  
25 taking of any action in accordance with the provisions of this Protective Order shall not be interpreted  
26 as a waiver of any claim or position or defense in this action, or any other actions.  
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1           11.     **No Admission.** The designation of any item as Confidential Information shall not be  
2 construed as an admission that such material, or any testimony concerning such material, would be  
3 admissible in evidence in this litigation or in any other proceeding.

4           12.     **Inadvertent Disclosure.** Nothing in this Protective Order abridges applicable law  
5 concerning inadvertent disclosure of a document that the Disclosing Party believes contains attorney-  
6 client communications, attorney work product, or otherwise privileged information. If a party  
7 inadvertently discloses documents or information subject to a claim of privilege or work product  
8 protection, such disclosure will not waive otherwise applicable claims of privilege or work product  
9 protection under applicable law. Upon discovery by the Receiving Party, or receipt of written notice  
10 from the Disclosing Party identifying privileged or protected Documents that were inadvertently  
11 produced, the receiving party shall within seven (7) business days either: (a) return or certify the  
12 destruction of all such documents, all copies, and any work product or portions of any work product  
13 containing or reflecting the contents of the subject materials; or (b) after attempting to resolve any  
14 dispute with opposing counsel informally, file a motion to challenge the assertion of privilege and  
15 tender the subject documents for *in camera* review with the motion. The moving party shall do  
16 nothing to compromise the privilege claim until the Court rules on said motion and the opportunity  
17 for appellate review is exhausted or the issue is otherwise resolved.

18           13.     **Parties' Own Documents.** This Protective Order shall in no way restrict the parties  
19 in their use of their own documents and information, and nothing in this Protective Order shall  
20 preclude any party from voluntarily disclosing its own documents or information to any party or  
21 nonparty.

22           14.     **Motion by Third Party to Compel Production of Confidential Information.** If any  
23 third party subpoenas Confidential Information from a party to this action or moves to compel a party  
24 to this action to produce any such information, such party shall immediately notify the parties who  
25 originally produced and/or designated such information that a subpoena has been served or a motion  
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1 has been made in order to allow the parties who originally produced and/or designated such  
2 information the opportunity to seek a protective order or oppose the motion or application. If, within  
3 thirty (30) days after receiving notice of a subpoena seeking Confidential Information from a  
4 receiving party, the party who originally produced and/or designated such information fails to move  
5 for a protective order, the party subject to the subpoena may produce said information. In addition, if  
6 a party is ordered to produce Confidential Information covered by this Protective Order, then notice  
7 and, if available, a copy of the order compelling disclosure shall immediately be given the parties  
8 who originally produced and/or designated such information. Nothing in this Protective Order shall  
9 be construed as requiring the party who is ordered to produce such Confidential Information to  
10 challenge or appeal any order requiring the production of such information or to subject  
11 himself/herself to any penalty for non-compliance with any legal process or seek any relief from the  
12 Court.  
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14 15. **No Effect on Other Rights.** This Protective Order shall in no way abrogate or  
15 diminish any pre-existing contractual, statutory, or other legal obligations or rights of any party with  
16 respect to Confidential Information.  
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18 16. **Modification.** In the event any party hereto seeks a Court order to modify the terms  
19 of this Protective Order, or seeks a protective order which incorporates the terms and conditions of  
20 this Protective Order said party shall make such request by written stipulation or noticed motion to  
21 all parties that must be served and filed in accordance with local court rules.  
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23 17. **Handling Upon Conclusion of Litigation.** All parties, counsel, and persons to whom  
24 disclosure was made agree to return all Confidential Information to the designating party upon written  
25 request from the designating party, within thirty (30) days of the conclusion of litigation between the  
26 parties, including final appellate action or the expiration of time to appeal or seek further review. In  
27 addition, upon written request, counsel shall certify in writing that all such Confidential Information  
28 have been returned. Counsel for each party also shall contact each person to whom that party has

1 provided a copy of any Confidential Information and request the documents be returned. In lieu of  
 2 returning Confidential Information, the person or party in possession of such information may elect  
 3 to destroy it. If the person or party in possession of Confidential Information elects to destroy it rather  
 4 than return it, that person or party must notify the designating party in writing of the destruction of  
 5 the information within ninety (90) days of the conclusion of litigation between the parties, including  
 6 final appellate action or the expiration of time to appeal or seek further review.

7  
 8 **18. Survival of the Terms of this Protective Order.** Even after the termination of this  
 9 litigation, the confidentiality obligations imposed by this Protective Order shall remain in effect until  
 10 a Designating Party otherwise in writing or a court order otherwise directs.

<p><b>AKERMAN LLP</b></p> <p><u>/s/ Jamie K. Combs</u>                  ARIEL E. STERN, ESQ.                  Nevada Bar No. 8276                  JAMIE K. COMBS, ESQ.                  Nevada Bar No. 13088                  Akerman LLP                  1635 Village Center Circle, Suite 200                  Las Vegas, NV 89134                  Attorneys for Plaintiffs Ditech Financial                  Services LLC</p>	<p><b>ROGER P. CROTEAU &amp; ASSOCIATES, LTD.</b></p> <p><u>/s/ Timothy Rhoda</u>                  TIMOTHY RHODA, ESQ.                  Nevada Bar No. 7878                  ROGER P. CROTEAU, ESQ.                  Nevada Bar No. 4958                  9120 West Post Road, Suite 100                  Las Vegas, Nevada 89148                  Attorneys for TBR 1, LLC and Airmotive                  Investments, LLC</p>
<p><b>PERRY &amp; WESTBROOK</b></p> <p><u>/s/ Cheryl Wilson</u>                  ALAN W. WESTBROOK, ESQ.                  Nevada Bar No. 6167                  CHERYL WILSON, ESQ.                  Nevada Bar No. 8312                  1701 W. Charleston Blvd., Suite 200                  Las Vegas, Nevada 89102                  Attorneys for Highland Ranch Homeowners                  Association</p>	

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**ORDER**

Paragraph 7.3 - Court Filings: Any motion regarding filing confidential information and motions to seal shall comply with LR IA 10-5 and the requirements of *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006) and *Center for Auto Safety v. Chrysler Group, LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016).

Paragraph 18 - Survival of the Terms of this Protective Order: The Protective Order is modified to reflect that although the parties may agree to be bound by the confidentiality terms of this Order beyond the conclusion of this lawsuit, the dismissal of this action will terminate the jurisdiction of this court.

**IT IS SO ORDERED.**

DATED: September 10, 2018.

  
\_\_\_\_\_  
WILLIAM G. COBB  
UNITED STATES MAGISTRATE JUDGE

**EXHIBIT A**

**ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_, and read in its entirety and understand the Protective Order issued by the United States District Court, for the District of Nevada, on \_\_\_\_\_, 2018, in the case of *Bank of America, N.A. v. Aliante Master Assoc., et al.*, Case No. 2:16-cv-00962-MMD-CWH. I agree to comply with and be bound by all terms of this 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 Protective Order to any person or entity except in strict compliance with this Protective Order. Further, I solemnly promise that I will not offer to sell, advertise or publicize that I have obtained any protected material subject to this Protective Order.

At the conclusion of this matter, upon written request from the designating party, I will return all protected materials which came into my possession or control to counsel for the party from whom I received the protected material, or I will destroy those materials. I understand that any confidential information contained within any summaries of protected material shall remain protected pursuant to the terms of this Order.

I further agree to submit to the jurisdiction of the United States District Court, for the District of Nevada for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I certify under penalty of perjury that the foregoing is true and correct.

Date: \_\_\_\_\_

City and State where signed: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_