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4 UNITED STATES DISTRICT COURT  
5 EASTERN DISTRICT OF WASHINGTON

6 CINCINNATI INSURANCE  
7 COMPANY,

Case No. 4:16-CV-5090-LRS

8 Plaintiff/Counterclaim Defendant,

9 v.

ORDER APPROVING STIPULATED  
PROTECTIVE ORDER

10 HARRY JOHNSON PLUMBING &  
11 EXCAVATING CO., INC.,

12 Defendant/Counterclaimant.  
13

14 BEFORE THE COURT is the parties' Stipulated Motion for Protective Order  
15 (ECF No. 30). The Motion contains the parties' stipulation regarding information  
16 produced in discovery designated by the parties as confidential. The Motion (ECF  
17 No. 30) is herein **GRANTED** and approved as proposed. **ACCORDINGLY, IT IS**  
18 **HEREBY ORDERED:**  
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20  
21 **1. PURPOSES AND LIMITATIONS**

22 Discovery in this action is likely to involve production of confidential,  
23 proprietary, or private information for which special protection may be warranted.  
24 Accordingly, the parties hereby stipulate to and petition the court to enter the  
25 following Stipulated Protective Order. The parties acknowledged that this  
26 agreement does not confer blanket protection on all disclosures or responses to  
27 discovery, the protection it affords from public disclosure and use extends only to  
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1 the limited information or items that are entitled to confidential treatment under the  
2 applicable legal principles, and it does not presumptively entitle parties to file  
3 confidential information under seal.

## 4 **2. CONFIDENTIAL MATERIAL**

5 “Confidential Material” shall include, but not be limited to, the following  
6 documents and tangible things produced or otherwise exchanged:

- 7 • Plaintiff’s documents containing business and proprietary information  
8 including, but not limited to, documents requested in defendant’s  
9 Requests for Production Nos. 4 and 5.

10 (Note: The inclusion of any category of documents listed above does not  
11 constitute an admission by any party that those documents are either discoverable  
12 or relevant to the claims and defenses in the case.)

## 14 **3. SCOPE**

15 The protections conferred by this agreement cover not only Confidential  
16 Material (as defined above), but also (1) any information copied or extracted from  
17 Confidential Material; (2) all copies, excerpts, summaries, or compilations of  
18 Confidential Material; and (3) any testimony, conversations, or presentations by  
19 parties or their counsel that might reveal Confidential Material. However, the  
20 protections conferred by this agreement do not cover information that is in the  
21 public domain or becomes part of the public domain through trial or otherwise.

## 23 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

### 24 **4.1 Basic Principles**

25 A receiving party may use Confidential Material that is disclosed or  
26 produced by another party or by a non-party in connection with this case only for  
27 prosecuting, defending, or attempting to settle this litigation. Confidential Material  
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1 may be disclosed only to the categories of persons and under the conditions  
2 described in this agreement. Confidential Material must be stored and maintained  
3 by a receiving party at a location and in a secure manner than ensures that access is  
4 limited to the persons authorized under this agreement.

#### 5 **4.2 Disclosure of Confidential Material**

6 Unless otherwise ordered by the court or permitted in writing by the  
7 designating party, a receiving party may disclose any Confidential Material only  
8 to:  
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- 10 (a) the receiving party's counsel of record in this action, as well as  
11 employees of counsel to whom it is reasonably necessary to disclose  
12 the information for this litigation;
- 13 (b) the officers, directors, and employees (including in house counsel  
14 and/or reinsurers if applicable) of the receiving party to whom  
15 disclosure is reasonably necessary for this litigation, unless the parties  
16 agree that a particular document or material produced is for  
17 Attorney's Eyes Only and is so designated;
- 18 (c) experts and consultants to whom disclosure is reasonably necessary  
19 for this litigation and who has signed the "Acknowledgment and  
20 Agreement to Be Bound (**Exhibit A**);
- 21 (d) the court, court personnel, and court reporters and their staff;
- 22 (e) copy or imaging services retained by counsel to assist in the  
23 duplication of Confidential Material, provided that counsel for the  
24 party retaining the copy or imaging service instructs the service not to  
25 disclose any Confidential Material to third parties and to immediately  
26 return all originals and copies of any Confidential Material;  
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- 2 (f) during their depositions, witnesses in the action to whom disclosure is
- 3 reasonably necessary and who have signed the “Acknowledgment and
- 4 Agreement to Be Bound” (**Exhibit A**), unless otherwise agreed by the
- 5 designating party or ordered by the court. Pages of transcribed
- 6 deposition testimony or exhibits to depositions that reveal
- 7 Confidential Material must be separately bound by the court reporter
- 8 and may not be disclosed to anyone except as permitted under this
- 9 agreement;
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- 11 (g) the author or recipient of a document containing the information or a
- 12 custodian or other person who otherwise possessed or knew the
- 13 information.

#### 14 **4.3 Filing Confidential Material**

15 Before filing Confidential Material or discussing or referencing such

16 material in court filings, the filing party shall confer with the designating party to

17 determine whether the designating party will remove the confidential designation,

18 whether the document can be redacted, or whether a motion to seal or stipulation

19 and proposed order is warranted.

### 20 **5. DESIGNATING PROTECTED MATERIAL**

#### 21 **5.1 Exercise of Restraint in Designating Material for Protection**

22 Each party or non-party that designates information or items for protection

23 under this agreement must take care to limit any such designation to specific

24 material that qualifies under the appropriate standards. The designating party must

25 designate for protection only those parts of material, documents, items, or oral or

26 written communications that qualify, so that other portions of the material,

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1 documents, items, or communications for which protection is not warranted are not  
2 swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations  
4 that are shown to be clearly unjustified or that have been made for an improper  
5 purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
6 to impose unnecessary expenses and burdens on other parties) expose the  
7 designating party to sanctions.  
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9 If it comes to a designating party's attention that information or items that it  
10 designated for protection do not qualify for protection, the designating party must  
11 promptly notify all other parties that it is withdrawing the mistaken designation.

## 12 **5.2 Manner and Timing of Designations**

13 Except as otherwise provided in this agreement, or as otherwise stipulated or  
14 ordered, disclosure or discovery material that qualifies for protection under this  
15 agreement must be clearly so designated before or when the material is disclosed  
16 or produced.

17 (a) **Information in documentary form:** (*e.g.*, paper or electronic  
18 documents and deposition exhibits, but excluding transcripts of  
19 depositions or other pretrial or trial proceedings), the designating  
20 party must affix the word "CONFIDENTIAL" to each page that  
21 contains Confidential Material. If only a portion or portions of the  
22 material on a page qualifies for protection, the producing party also  
23 must clearly identify the protected portion(s) (*e.g.*, by making  
24 appropriate markings in the margins).  
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26 (b) **Testimony given in deposition or in other pretrial or trial**  
27 **proceedings:** the parties must identify on the record, during the  
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1 deposition, hearing, or other proceeding, all protected testimony,  
2 without prejudice to their right to so designate other testimony after  
3 reviewing the transcript. Any party or non-party may, within fifteen  
4 days after receiving a deposition transcript, designate portions of the  
5 transcript, or exhibits thereto, as Confidential Material.

- 6 (c) **Other tangible items:** the producing party must affix in a prominent  
7 place on the exterior of the container or containers in which the  
8 information or item is stored the word “CONFIDENTIAL.” If only a  
9 portion or portions of the information or item warrant protection, the  
10 producing party, to the extent practicable, shall identify the protected  
11 portion(s).  
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### 13 **5.3 Inadvertent Failures to Designate**

14 If timely corrected, an inadvertent failure to designate qualified information  
15 or items does not, standing alone, waive the designating party’s right to secure  
16 protection under this agreement for such material. Upon timely correction of a  
17 designation, the receiving party must make reasonable efforts to ensure that the  
18 material is treated in accordance with the provisions of this agreement.  
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## 20 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

### 21 **6.1 Timing of Challenges**

22 Any party or non-party may challenge a designation of confidentiality at any  
23 time. Unless a prompt challenge to a designating party’s confidentiality  
24 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary  
25 economic burdens, or a significant disruption or delay of the litigation, a party does  
26 not waive its right to challenge a confidentiality designation by electing not to  
27 mount a challenge promptly after the original designation is disclosed.  
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2           **6.2 Meet and Confer**

3           The parties must make every attempt to resolve any dispute regarding  
4 confidential designations without court involvement. Any motion regarding  
5 confidential designations or for a protective order must include a certification, in  
6 the motion or in a declaration or affidavit, that the movant has engaged in a good  
7 faith meet and confer conference with other affected parties in an effort to resolve  
8 the dispute without court action. The certification must list the date, manner, and  
9 participants to the conference. A good faith effort to confer requires a face-to-face  
10 meeting or a telephone conference.  
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12           **6.3 Judicial Intervention**

13           If the parties cannot resolve a challenge without court intervention, the  
14 designating party may file and serve a motion to retain confidentiality. The burden  
15 of persuasion in any such motion shall be on the designating party. Frivolous  
16 challenges, and those made for an improper purpose (*e.g.*, to harass or impose  
17 unnecessary expenses and burdens on other parties) may expose the challenging  
18 party to sanctions. All parties shall continue to maintain the material in question as  
19 confidential until the court rules on the challenge.  
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21           **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**  
22           **PRODUCED IN OTHER LITIGATION**

23           If a party is served with a subpoena or a court order issued in other litigation  
24 that compels disclosure of any information or items designated in this action as  
25 “CONFIDENTIAL,” that party must:

- 26           (a) promptly notify the designating party in writing and include a copy of  
27           the subpoena or court order;  
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1 (b) promptly notify in writing the party who caused the subpoena or order  
2 to issue in the other litigation that some or all of the material covered  
3 by the subpoena or order is subject to this agreement. Such  
4 notification shall include a copy of this agreement; and

5 (c) cooperate with respect to all reasonable procedures sought to be  
6 pursued by the designating party whose confidential material may be  
7 affected.  
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9 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

10 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
11 Confidential Material to any person or in any circumstance not authorized under  
12 this agreement, the receiving party must immediately (a) notify in writing the  
13 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve  
14 all unauthorized copies of the protected material, (c) inform the person or persons  
15 to whom unauthorized disclosures were made of all the terms of this agreement,  
16 and (d) request that such person or persons execute the “Acknowledgment and  
17 Agreement to Be Bound” that is attached hereto as Exhibit A.

18 **9. INADVERTENT PRODUCTION**

19 When a producing party gives notice to receiving parties that certain  
20 inadvertently produced material is subject to a claim of privilege or other  
21 protection, the obligations of the receiving parties are those set forth in Federal  
22 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
23 whatever procedure may be established in an e-discovery order or agreement that  
24 provides for production without prior privilege review. Parties shall confer on an  
25 appropriate non-waiver order under Fed. R. Evid. 502.  
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27 **10. NON TERMINATION AND RETURN OF DOCUMENTS**  
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Within 60 days after the termination of this action, including all appeals, each receiving party must return all Confidential Material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Confidential Material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO ORDERED.

The District Court Executive is directed to file this Order and provide copies to counsel.

DATED this 7th day of February, 2017.

s/Lonny R. Suko  
LONNY R. SUKO  
SENIOR U.S. DISTRICT COURT JUDGE