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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CITY OF ISSAQUAH, a municipal  
corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited  
liability company; and RESMARK EQUITY  
PARTNERS, LLC, a Delaware limited liability  
company,

Defendants.

Case No.: C18-0910 RSM

STIPULATED PROTECTIVE ORDER

AND RELATED COUNTERCLAIMS,  
CROSSCLAIMS, AND THIRD-PARTY  
CLAIMS

The Parties, through their respective counsel, submit the following Stipulated Protective  
Order:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or  
private information for which special protection may be warranted. Accordingly, the parties  
hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The

STIPULATED PROTECTIVE ORDER  
NO. 18-CV-00910 RSM - 12

1 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket  
2 protection on all disclosures or responses to discovery, the protection it affords from public  
3 disclosure and use extends only to the limited information or items that are entitled to confidential  
4 treatment under the applicable legal principles, and it does not presumptively entitle parties to file  
5 confidential information under seal.

6 2. “CONFIDENTIAL” MATERIAL

7 “Confidential” materials may include documents and tangible things that contain (1) non-  
8 public business information that is treated confidentially by the producing party in the ordinary  
9 course of business and whose disclosure may cause the producing party to be commercially  
10 disadvantaged or prejudiced or (2) private/personally identifiable information protected by federal,  
11 state, or local law, including a person’s date of birth, Social Security Number, home address, home  
12 phone number, medical information, or other sensitive personal data. Some examples of  
13 documents and things that contain such information are: financial plans, financial statements and  
14 related documents (including but not limited to balance sheets, cash receipts and disbursements,  
15 budgets and budget reconciliations, and income statements), pricing information, sales  
16 information, documentation used to create bids, profit and loss information, costs information, tax  
17 information, bank records, investor information and communications with investors, member  
18 information and communications with members, technical practices, technical methods, technical  
19 plans and designs, trade secrets and other sensitive trade and pricing information, minutes of  
20 confidential meetings, communications with insurers, employment reviews, personnel records,  
21 and medical records.

22 3. SCOPE

23 The protections conferred by this agreement cover not only confidential material (as  
24 specified above), but also (1) any information copied or extracted from confidential material; (2)  
25 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
26 conversations, or presentations by parties or their counsel that might reveal confidential material.

1           However, the protections conferred by this agreement do not cover information that is in  
2 the public domain or becomes part of the public domain through trial or otherwise.

3 4.       ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4           4.1       Basic Principles. A receiving party may use confidential material that is disclosed  
5 or produced by another party or by a non-party in connection with this case only for prosecuting,  
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
7 the categories of persons and under the conditions described in this agreement. Confidential  
8 material must be stored and maintained by a receiving party at a location and in a secure manner  
9 that ensures that access is limited to the persons authorized under this agreement.

10          4.2       Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
11 by the Court or permitted in writing by the designating party, a receiving party may disclose any  
12 confidential material only to:

13               (a)       the receiving party’s counsel of record in this action, as well as employees  
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

15               (b)       the officers, directors, and employees (including in house counsel) of the  
16 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties  
17 agree that a particular document or material produced is for Attorney’s Eyes Only and is so  
18 designated;

19               (c)       experts and consultants to whom disclosure is reasonably necessary for this  
20 litigation and who have signed the “Acknowledgment and 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 duplication of  
23 confidential material, provided that counsel for the party retaining the copy or imaging service  
24 instructs the service not to disclose any confidential material to third parties and to immediately  
25 return all originals and copies of any confidential material;

1 (f) during their depositions, witnesses in the action to whom disclosure is  
2 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
3 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
4 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
5 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
6 under this agreement;

7 (g) the author or recipient of a document containing the information or a  
8 custodian or other person who otherwise possessed or knew the information.

9 4.3 Filing Confidential Material. Before filing confidential material or discussing or  
10 referencing such material in court filings, the filing party shall confer with the designating party,  
11 in accordance with LCR 5(g)(3)(A), to determine whether the designating party will remove the  
12 confidential designation, whether the document can be redacted, or whether a motion to seal or  
13 stipulation and proposed order is warranted. During the meet and confer process, the designating  
14 party must identify the basis for sealing the specific confidential information at issue, and the filing  
15 party shall include this basis in its motion to seal, along with any objection to sealing the  
16 information at issue. LCR 5(g) sets forth the procedures that must be followed and the standards  
17 that will be applied when a party seeks permission from the Court to file material under seal. A  
18 party who seeks to maintain the confidentiality of its information must satisfy the requirements of  
19 LCR 5(g)(3)(B), even if it is not the party filing the motion to seal. Failure to satisfy this  
20 requirement will result in the motion to seal being denied, in accordance with the strong  
21 presumption of public access to the Court’s files.

22 5. DESIGNATING PROTECTED MATERIAL

23 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party  
24 or non-party that designates information or items for protection under this agreement must take  
25 care to limit any such designation to specific material that qualifies under the appropriate  
26 standards. The designating party must designate for protection only those parts of material,

1 documents, items, or oral or written communications that qualify, so that other portions of the  
2 material, documents, items, or communications for which protection is not warranted are not swept  
3 unjustifiably within the ambit of this agreement.

4 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
5 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
6 unnecessarily encumber or delay the case development process or to impose unnecessary expenses  
7 and burdens on other parties) expose the designating party to sanctions.

8 If it comes to a designating party's attention that information or items that it designated for  
9 protection do not qualify for protection, the designating party must promptly notify all other parties  
10 that it is withdrawing the mistaken designation.

11 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
12 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
13 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
14 be clearly so designated before or when the material is disclosed or produced.

15 (a) Information in documentary form: (*e.g.*, paper or electronic documents and  
16 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
17 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
18 confidential material. If only a portion or portions of the material on a page qualifies for protection,  
19 the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate  
20 markings in the margins).

21 (b) Testimony given in deposition or in other pretrial proceedings: the parties  
22 and any participating non-parties must identify on the record, during the deposition or other pretrial  
23 proceeding, all protected testimony, without prejudice to their right to so designate other testimony  
24 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the  
25 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or  
26

1 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information  
2 at trial, the issue should be addressed during the pre-trial conference.

3 (c) Other tangible items: the producing party must affix in a prominent place  
4 on the exterior of the container or containers in which the information or item is stored the word  
5 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,  
6 the producing party, to the extent practicable, shall identify the protected portion(s).

7 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
8 designate qualified information or items does not, standing alone, waive the designating party’s  
9 right to secure protection under this agreement for such material. Upon timely correction of a  
10 designation, the receiving party must make reasonable efforts to ensure that the material is treated  
11 in accordance with the provisions of this agreement.

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
14 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality  
15 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
16 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
17 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
18 original designation is disclosed.

19 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
20 regarding confidential designations without the Court’s involvement. Any motion regarding  
21 confidential designations or for a protective order must include a certification, in the motion or in  
22 a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference  
23 with other affected parties in an effort to resolve the dispute without court action. The certification  
24 must list the date, manner, and participants to the conference. A good faith effort to confer requires  
25 a face-to-face meeting or a telephone conference.

1           6.3    Judicial Intervention.  If the parties cannot resolve a challenge without court  
2 intervention, the designating party may file and serve a motion to retain confidentiality under LCR  
3 7 (and in compliance with LCR 5(g), if applicable).  The burden of persuasion in any such motion  
4 shall be on the designating party.  Frivolous challenges, and those made for an improper purpose  
5 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the  
6 challenging party to sanctions.  All parties shall continue to maintain the material in question as  
7 confidential until the court rules on the challenge.

8 7.  PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
9    LITIGATION

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

13                   (a)    promptly notify the designating party in writing and include a copy of the  
14 subpoena or court order;

15                   (b)    promptly notify in writing the party who caused the subpoena or order to  
16 issue in the other litigation that some or all of the material covered by the subpoena or order is  
17 subject to this agreement.  Such notification shall include a copy of this agreement; and

18                   (c)    cooperate with respect to all reasonable procedures sought to be pursued by  
19 the designating party whose confidential material may be affected.

20 8.    UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21           If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
22 material to any person or in any circumstance not authorized under this agreement, the receiving  
23 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,  
24 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the  
25 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,  
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1 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be  
2 Bound” that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 receiving parties are those set forth in Fed. R. Civ. P. 26(b)(5)(B). This provision is not intended  
8 to modify whatever procedure may be established in an e-discovery order or agreement that  
9 provides for production without prior privilege review. The parties agree to the entry of a non-  
10 waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 10. NON-TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals, each receiving  
13 party must return all confidential material to the producing party, including all copies, extracts and  
14 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

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

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

21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

22 Dated this 25<sup>th</sup> day of September 2019.

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11  
12 PURSUANT TO STIPULATION, IT IS SO ORDERED;

13 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any  
14 documents in this proceeding shall not, for the purposes of this proceeding or any other federal or  
15 state proceeding, constitute a waiver by the producing party of any privilege applicable to those  
16 documents, including the attorney-client privilege, attorney work-product protection, or any other  
17 privilege or protection recognized by law.

18 DATED this 27<sup>th</sup> day of September 2019.

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20 

21 RICARDO S. MARTINEZ  
22 CHIEF UNITED STATES DISTRICT JUDGE  
23  
24  
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26

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, \_\_\_\_\_ [print or type full name], of  
4 \_\_\_\_\_ [print or type full address], declare under penalty of  
5 perjury that I have read in its entirety and understand the Stipulated Protective Order that was  
6 issued by the United States District Court for the Western District of Washington on  
7 \_\_\_\_\_, 2019 in the case of *City of Issaquah v. ORA Talus 90, LLC, et al.*; No. 18-cv-  
8 00910 RSM. I agree to comply with and to be bound by all the terms of this Stipulated Protective  
9 Order and I understand and acknowledge that failure to so comply could expose me to sanctions  
10 and punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
11 manner any information or item that is subject to this Stipulated Protective Order to any person or  
12 entity except in strict compliance with the provisions of this Order.

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

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

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

18 Printed name: \_\_\_\_\_

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