

## **EXHIBIT 1**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

|                              |   |                         |
|------------------------------|---|-------------------------|
| In re:                       | ) | Chapter 11              |
|                              | ) | Case No. 08-10375 (JMP) |
| DJK Residential LLC, et al., | ) | Jointly Administered    |
|                              | ) |                         |
| Debtors.                     | ) |                         |
|                              | ) |                         |

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**PROTECTIVE ORDER**

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1. This Order applies to all information, documents and things subject to discovery in this action produced either by a Party or a Non-Party (each a “Producing Person”) in response to or in connection with any discovery conducted related to the Dispute, including without limitation, deposition testimony (whether based upon oral examination or written questions), answers to interrogatories, responses to requests for admission, documents and things produced (including documents and things produced to the receiving party for inspection and documents and things provided to the receiving party, whether in the form of originals or copies) as well as any and all copies, abstracts, digests, notes, summaries, and excerpts thereof (collectively referred to as “Discovery Material”).

2. The Parties may designate as “Confidential” any Discovery Material produced in response to the Discovery Requests that they believe in good faith, or have been reasonably advised, contains confidential or proprietary information concerning the Debtors and their chapter 11 cases, including but not limited to proprietary or confidential trade secrets or technical, business, financial or personnel information of a current nature that can be protected under Federal Rule of Civil Procedure 26(c) and Federal Rule of Bankruptcy Procedure 7026. The Parties may designate as “Highly Confidential” any Confidential Discovery Material produced in response to the Discovery Requests that they believe in good faith, or have been

reasonably advised, contains confidential or propriety information concerning the Debtors and their chapter 11 cases of such a sensitive nature that disclosure without adequate protection would harm the Debtor's business or other interests. If a Party or Non-Party produces Discovery Materials that have been produced in another litigation or to any government entity and such Discovery Materials have been designated confidential or were accompanied by a request that confidential treatment be accorded them, such Discovery Materials shall be deemed to have been designated "Confidential" for purposes of this Protective Order.

3. Any "Highly Confidential Material" or "Confidential Material" may be designated by the producing party as such by marking every such page "Highly Confidential" or "Confidential" respectively, or by informing the party to whom the material is provided, in writing, that such material is "Highly Confidential" or "Confidential." Such markings should not obliterate or obscure the content of the material that is produced.

4. Any Objector that agrees in writing, as set forth in Exhibit A attached, to the terms of this Protective Order, shall be treated as a Party to this Protective Order and permitted to review Highly Confidential Material and Confidential Material subject to paragraphs 5 and 6.

5. Highly Confidential Material shall only be given, shown, made available to or communicated to the following:

- a. outside counsel, industry advisors, financial advisors, accounting advisors, and testifying experts for a Party and staff of counsel for a Party, who are working under the express direction of such counsel;
- b. outside counsel, industry advisors, financial advisors, accounting advisors, and testifying experts for any Objector and staff of such counsel who are working under the express direction of such counsel, provided that any Objector's access to Highly Confidential Material shall be limited to those materials responsive to their specific Discovery Requests;
- c. any deponent during a deposition where the deponent is (i) a current employee, officer, or director of the Producing Person or any of its affiliates or (ii) an author or recipient of the Highly Confidential Material in question;

- d. the Court, its officers and clerical staff;
  - e. outside photocopying, graphic production services, or litigation support services;
  - f. court reporters, stenographers, or videographers who record deposition or other testimony in the litigation; and,
  - g. any other person or entity to whom the Producing Person may consent in writing.
6. Confidential Material shall only be given, shown, made available to or communicated to the following:

- a. those provided in paragraph 5 and 6;
- b. The Parties and their advisors or experts;
- c. the Objectors and their advisors or experts; and,
- d. any person who is identified as a witness who will testify in the Dispute.

7. Highly Confidential Material and the substantive information contained within such items shall not be given, shown, made available to, disclosed or communicated in any way, except to those people provided in paragraph 6. Confidential Material and the substantive information contained within such items shall not be given, shown, made available to, disclosed or communicated in any way, except to those people provided in paragraph 5.

8. All documents marked “Highly Confidential” shall remain provisionally treated as “Highly Confidential” under this Protective Order for a period of seven days. If no Party objects within seven days, then the materials shall remain “Highly Confidential.” If a Party objects to the designation of “Highly Confidential” within the seven day period, the producing party shall respond to the objection within two days. If the Parties cannot agree that such materials are properly marked “Highly Confidential,” then the producing party shall seek relief as necessary from the Bankruptcy Court consistent with the Local Rules governing discovery disputes. Materials shall remain “Highly Confidential” until the Bankruptcy Court rules on the dispute and

if the producing party does not obtain relief from the Bankruptcy Court, the materials shall be deemed “Confidential” under this Protective Order.

9. Before any expert, advisor, or witness is given access to Discovery Materials designated “Confidential,” or “Highly Confidential,” if allowed by the above rules, such person shall be provided with a copy of this Protective Order and shall acknowledge in a written statement, in the form provided as Exhibit B hereto, that he or she read the Protective Order and agrees to be bound by the terms thereof. Such executed forms shall be retained in the files of counsel for the Party who gave access to the Confidential Materials to the person who was provided such access. Such executed forms shall not be subject to disclosure under the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure unless a showing of good cause is made and the Bankruptcy Court so orders.

10. All recipients of Confidential Materials acknowledge and agree that they are aware that by receiving such materials (a) they may be receiving material non-public information about the Debtors or their affiliates and (b) there exist laws, including federal securities laws, that may restrict or eliminate the sale or purchase of securities and debt of the Company as a result of the receipt of such information. Nothing herein shall be construed as an admission that any information designated as Confidential under this order constitutes material non-public information or otherwise that the disclosure of same would violate any laws.

11. Except as otherwise provided herein, this Protective Order shall not apply to any Discovery Material offered or otherwise used by the Parties at the Hearing. Subject to agreement of the Parties, which consent shall not be withheld unreasonably, and provided that such Highly Confidential Material or Confidential Material is accepted for filing by the Courts in this proceeding under seal, Highly Confidential Material or Confidential Material may be filed under

seal with the United States Bankruptcy Court for the Southern District of New York, the United States District Court for the Southern District of New York, and the United States Court of Appeals for the Second Circuit (the “Courts”) (including Clerks and other personnel of the Courts). Highly Confidential Material or Confidential Material and any copies thereof, and the information contained therein, that are filed with the Courts or any pleadings, motions or other papers filed with the Courts, shall be filed under seal in a separate sealed envelope conspicuously marked “Filed Under Seal – Subject to Confidentiality Order,” or with such other markings as required by the Courts’ rules. Where possible, only those portions of filings with the Courts that disclose Highly Confidential Material or Confidential Material shall be filed under seal.

12. To the extent that any Party wishes to use Highly Confidential Material or Confidential Material at the Hearing, the Parties shall meet and confer in good faith to discuss ways to redact the Highly Confidential Material or Confidential Material so that the material may be offered or otherwise used by any Party. If the Parties are unable to resolve a dispute involving such redaction within three (3) days of such conference or prior to the Hearing, any Party may then move the Bankruptcy Court to resolve any such dispute.

13. All testimony given at a deposition and each transcript of a deposition will be presumptively treated as “Confidential” for a period of fifteen (15) days following the deposition, subject to extension upon request, which shall not be unreasonably withheld. Deposition testimony can be specifically identified as Highly Confidential by a statement on the record. Within said fifteen (15) days, counsel for any party to this action and/or counsel for the deponent may designate certain, if any, pages of the transcript as “Confidential” or “Highly Confidential” by notifying all counsel of record in writing of said designation, and thereafter such pages will be treated as designated. Counsel for each party will be responsible for marking

the designated exhibits and pages of copies of the transcript in their possession with the appropriate legend as specified in paragraph 4. Testimony given at a deposition may also be so designated by an appropriate statement at the time of the giving of the testimony. If no such designation is made by counsel within fifteen (15) days after the deposition, the transcript will be considered not to contain Highly Confidential Material or Confidential Material. Use at deposition of a document previously designated as Highly Confidential or Confidential will have no effect on its designation.

14. The Parties do not waive any right to object to any discovery request, or to the admission of evidence on any ground, or seek any further protective order, or to seek relief from the Bankruptcy Court from any provision of this Order by application on notice on any grounds.

15. If any party objects to the designation of any Discovery Material as “Confidential,” the party shall first state the objection by letter to the other party. The parties agree to confer in good faith by telephone or in person to attempt to resolve any dispute respecting the terms or operation of this Protective Order. If the parties are unable to resolve such dispute within seven (7) days of such conference or prior to the Hearing any party may then move the Bankruptcy Court to do so. Until the Bankruptcy Court rules on such dispute, the Discovery Material shall continue to be treated as designated. Upon motion, the Bankruptcy Court may order the removal of the “Confidential” designation from any Discovery Material so designated subject to the provisions of this Protective Order. In connection with any motion concerning the propriety of a “Confidential” designation, the party making the designation shall bear the burden of proof.

16. Any material produced subject to this Protective Order shall be deemed produced pursuant to legal proceedings and by Protective Order of this Court.

17. Except as set forth above, the failure of any party to challenge a designation of Discovery Material as “Confidential” or “Highly Confidential” during the discovery period shall not be a waiver of that party’s right to object to the designation of such material at a later date.

18. Nothing in this Protective Order shall impose any restrictions on the use or disclosure by any party of documents, materials, or other information produced as Discovery Material and obtained by such party independently of this case.

19. Within 60 days of the conclusion of the Dispute including all appeals as to all parties, all Highly Confidential Material or Confidential Material, and all copies or notes thereof, shall be returned to counsel for the respective Parties, or destroyed, except that counsel may retain their work product and copies of court filings, transcripts, and exhibits, provided said retained documents will continue to be treated as provided in this Protective Order. If a person in possession of Highly Confidential Material or Confidential Material chooses to destroy documents after the Hearing has concluded, that person shall certify such destruction in writing to opposing counsel upon written request for such certification by such counsel. Notwithstanding anything in this paragraph, to the extent that the information in the Highly Confidential Material or Confidential Material remains confidential, the Parties agree to be bound by the terms of this Protective Order.

20. This Protective Order applies to all Non-Parties that are served with subpoenas in connection with the Confirmation Litigation or who otherwise produce documents or are noticed for deposition in connection with the Confirmation Litigation, and all such Non-Parties are entitled to the protection afforded hereby upon signing a copy of this Protective Order and agreeing to be bound by its terms.



21. Any Party may move to modify the provisions of this Protective Order at any time or the Parties may agree by written stipulation, subject to further order of the Bankruptcy Court, to modify the provisions of the Protective Order. Should any Non-Party seek access to the Confidential Material, by request, subpoena or otherwise, the Party or recipient of the Confidential Material from whom such access is sought, as applicable, shall promptly notify the Producing Party who produced such Confidential Materials of such requested access and shall not provide such materials unless required by law or with the consent of the Producing Party.

22. Nothing in this Protective Order affects the right of any Producing Person that designates material “Confidential” or “Highly Confidential” to use or disclose such material in any way. Such disclosure will not waive the protections of this Protective Order and will not entitle other parties, non-parties, or their attorneys to use or disclose such material in violation of this Protective Order, except that if the Producing Person uses such material in a manner inconsistent with its confidential status, then that will serve as a basis to object to the designation and said objections will be resolved as set forth in paragraph 15.

23. If information subject to a claim of attorney-client privilege or work product immunity is inadvertently or mistakenly produced, such production will in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or work-product immunity for such information. If information subject to a claim of immunity or privilege is inadvertently or mistakenly produced, upon written request made by the Producing Person within twenty-one (21) days of discovery of such inadvertent or mistaken production, the information for which a claim of inadvertent production is made, including all copies, will be returned within seven (7) business days of such request unless the receiving party intends to challenge the Producing Person’s assertion of privilege or immunity. All copies of inadvertently or mistakenly

produced documents will be destroyed, and any document, material, or information reflecting the contents of the inadvertently produced information will be expunged. If a receiving party objects to the return of such information within the seven (7) business day period described above, the Producing Person may move the Court for an order compelling the return of such information. Pending the Court's ruling, a receiving party may retain the inadvertently or mistakenly produced documents in a sealed envelope and will not make any use of such information.

24. The provisions of this Protective Order shall survive the final termination of the Dispute for any retained Highly Confidential Material or Confidential Material.

Date: \_\_\_\_\_, 2008  
New York, New York

\_\_\_\_\_  
United States Bankruptcy Judge

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

|                              |   |                         |
|------------------------------|---|-------------------------|
| In re:                       | ) | Chapter 11              |
|                              | ) | Case No. 08-10375 (JMP) |
| DJK Residential LLC, et al., | ) | Jointly Administered    |
|                              | ) |                         |
| Debtors.                     | ) |                         |
|                              | ) |                         |

**Exhibit A**

**OBJECTOR'S DECLARATION OF AGREEMENT TO BECOME A PARTY TO THE  
STIPULATED PROTECTIVE ORDER**

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1. I hereby certify and agree that I have read and understand the terms of the Stipulated Protective Order, (the "Order") in the above-captioned actions and that I am counsel for \_\_\_\_\_ (the "Objector")<sup>1</sup> as that term is defined therein.

2. The Objector agrees to be bound by the terms and conditions of the Order and certifies that it will not use Confidential or Highly Confidential information for any purpose other than this litigation among the parties, and will not disclose or cause Confidential or Highly Confidential information to be disclosed to anyone not expressly permitted by the Order to receive Confidential or Highly Confidential, as applicable, information.

3. The Objector shall retain in confidence from all individuals not expressly permitted to receive information designated as Confidential or Highly Confidential, whether at home or at work, all copies of any materials it receives which have been designated as Confidential or Highly Confidential, and that it will carefully maintain such materials consistent with the Order. The Objector acknowledges that the return or destruction of Confidential or

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<sup>1</sup> Unless otherwise indicated, capitalized terms have the meaning given in the Order.

Highly Confidential material shall not relieve it from any other continuing obligations imposed upon it by the Order.

4. The Objector acknowledges and agrees that it is aware that by receiving materials designated as Confidential or Highly Confidential (a) it may be receiving material non-public information about the Debtors or their affiliates, and (b) there exist laws, including federal securities laws, that may restrict or eliminate the sale or purchase of securities and debt of the Company as a result of the receipt of such information.

5. The Objector stipulates to the jurisdiction of this Court solely with respect to the provisions of the Order.

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Address)

As Counsel for

\_\_\_\_\_  
(Objector)

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

|                              |   |                         |
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| In re:                       | ) | Chapter 11              |
|                              | ) | Case No. 08-10375 (JMP) |
| DJK Residential LLC, et al., | ) | Jointly Administered    |
|                              | ) |                         |
| Debtors.                     | ) |                         |
|                              | ) |                         |

**Exhibit B**

**DECLARATION OF ACKNOWLEDGEMENT AND  
AGREEMENT TO BE BOUND BY STIPULATED PROTECTIVE ORDER**

I, \_\_\_\_\_, declare under penalty of perjury that:

1. My address is .
2. My present employer is .
3. My present occupation or job description is .

4. I hereby certify and agree that I have read and understand the terms of the Stipulated Protective Order in the above-captioned actions. I further certify that I will not use “Confidential” or “Highly Confidential” information for any purpose other than this litigation among the parties, and will not disclose or cause “Confidential” or “Highly Confidential” information to be disclosed to anyone not expressly permitted by the Order to receive “Confidential” or “Highly Confidential,” as applicable, information. I agree to be bound by the terms and conditions of the Order.

5. I understand that I am to retain in confidence from all individuals not expressly permitted to receive information designated as “Confidential” or “Highly Confidential,” whether at home or at work, all copies of any materials I receive which have been designated as

“Confidential” or “Highly Confidential,” and that I will carefully maintain such materials in a container, drawer, room or other safe place in a manner consistent with the Order. I acknowledge that the return or destruction of “Confidential” or “Highly Confidential” material shall not relieve me from any other continuing obligations imposed upon me by the Order.

6. I acknowledge and agree that I am aware that by receiving materials designated as “Confidential” or “Highly Confidential” (a) I may be receiving material non-public information about the Debtors or their affiliates, and (b) there exist laws, including federal securities laws, that may restrict or eliminate the sale or purchase of securities and debt of the Company as a result of the receipt of such information.

7. I stipulate to the jurisdiction of this Court solely with respect to the provisions of the Order.

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

\_\_\_\_\_  
(Signature)