



James Nelson
Principal, Head of Tri-state
Investment Sales

Avison Young – New York, LLC
530 Fifth Avenue
4th Floor
New York, NY 10036
avisonyoung.com

CONFIDENTIALITY AND NON-CIRCUMVENTION AGREEMENT

Date: _____, 2022

Property: 514 West 24th Street , Retail Condominium Unit (the “Property”)

Ladies & Gentlemen:

This will serve to confirm our agreement concerning certain material, data, and information that Avison Young – New York, LLC (“**AYNY**”) will make available to the undersigned principal (“**Principal**”) and its designated broker (“**Broker**”) for study in connection with a possible purchase by Principal of the Property. This information may include, without limitation, an offering memorandum or materials and various other papers, legal instruments, studies, brochures, computer output, and other data concerning the Property, as well as oral discussions and Property visitations (collectively, “**Evaluation Material**”)

AYNY is prepared to furnish Principal and Broker with the Evaluation Material in connection with discussions and negotiations concerning a possible transaction involving the Property only on the conditions that Principal and Broker treat such Evaluation Material confidentially and confirms certain representations to AYN Y. Therefore, as a prerequisite to AYN Y’s furnishing the Evaluation Material to us, Principal and Broker, each, jointly and severally, represent and agree as follows:

1. The Evaluation Material furnished to Principal and Broker will be used by Principal and Broker solely for evaluating a possible transaction exclusively for Principal’s own account, as principal in the transaction, and not as a broker or agent for any other person. Therefore, Principal and Broker agree to keep all Evaluation Material strictly confidential; provided however, that any such Evaluation Material may be disclosed to its directors, officers, employees, partners, advisors, and consultants as well as its counsel, accounting firms, and financial institutions (“**Representatives**”) who need to know such information for the purpose of assisting Principal or Broker with Principal’s possible purchase of the Property. Principal and Broker’s Representatives will be informed by Principal and Broker of the confidential nature of such information and will be directed by Principal and Broker to treat such information with strict confidence. Principal and Broker, jointly and severally, will be responsible for the compliance by those parties with the terms of this Agreement.

Principal and Broker agree not to copy or duplicate the Evaluation Material and to return the Evaluation Material to AYN Y promptly if Principal decides not to go forward with discussions or if requested by AYN Y. Principal and Broker agree that the owner of the Property (“**Owner**”) and AYN Y will have no adequate remedy at law if either Principal or Broker violates any of the terms of this Agreement. In such event, the Owner or AYN Y will have the right, in addition to any other right the Owner or AYN Y may have, to seek injunctive relief to restrain any breach or threatened breach by us or specific enforcement of such terms. In the event that the Owner and/or AYN Y is successful in any action for injunctive relief or in any action for damages as a result of our breach of this Agreement, Principal and Broker, jointly and severally, agree to pay the Owner’s and AYN Y’s costs and expenses of such action, including reasonable attorneys’ fees, costs, and expenses.

In addition, Principal and Broker will not disclose and Principal and Broker will direct its Representatives not to disclose to any person, the fact that the Evaluation Material has been made available to Principal and Broker, that discussions or negotiations among Principal, Broker , the Owner and AYN Y are now taking place or will take place, or any of the terms, conditions, or other facts with respect to the possible acquisition of the Property.

The term "Evaluation Material" does not include information or materials that (i) are or become available to the public other than as a result of a disclosure by Principal, (ii) becomes available to Principal on a non-confidential basis from another source that, to the best of Principal or Broker's knowledge, is not subject to a confidentiality agreement, (iii) was known by Principal or Broker before its disclosure by AYN or Owner, or (iv) are required to be disclosed by applicable law or at the request of any regulatory or supervisory authority having jurisdiction over Principal.

2. Although AYN has endeavored to include in the Evaluation Material information that AYN believes to be relevant for the purpose of helping Principal and Broker in their evaluation of the Property for possible purchase, Principal and Broker understands and acknowledges that neither the Owner nor AYN nor any of their respective affiliates or agents make any representation or warranty to Principal or Broker as to the accuracy or completeness of the Evaluation Material. Principal and Broker agree that the Owner, AYN and their respective affiliates or agents will not have any liability to us as a result of Principal or Broker's use of the Evaluation Material and it is understood that Principal and Broker are expected to perform and is responsible for such due diligence investigations and inspections of the Property, including investigation of any environmental conditions, as Principal and Broker deem necessary or desirable and as permitted by agreement with the Owner of the Property.
3. Principal and Broker represents that Broker is the sole agent representing Principal in any possible transaction involving the Property. Principal and Broker acknowledge that no fees, commissions or expenses will be due from AYN or Owner to Principal or to any person or entity, other than Broker pursuant to separate commission agreement, purporting to represent or act on its behalf. Principal and Broker shall indemnify and defend AYN and Owner against any third party claim arising out of the breach of this Paragraph 3.
4. AYN is acting on behalf of Owner as the sole exclusive agent and advisor in connection with the sale of the Property. Unless otherwise agreed to by the parties in writing, Principal agrees to pay all brokerage commissions, finder's fees, and other compensation to which any broker, finder, or other person, its affiliate, successors, assigns and related parties has dealt who may be entitled to in connection with the negotiation and/or sale of the Property to Principal, except AYN's compensation, which is payable by the Owner. In addition, Principal agrees to defend, indemnify, and hold harmless Owner and AYN against any and all claims, liabilities, damages, and costs of defense (including reasonable attorneys' fees, costs, and expense) for a commission, fee, or other compensation by any other person, broker, finder, or agent alleging that they have dealt with or through Principal or Broker, our affiliates, successors, assigns, and related parties, in connection with the negotiations and/or sale of the Property to Principal.
5. Principal and Broker agree not to communicate with any tenants, governmental authorities, service providers, or other parties with a contractual relationship to the Property, except in the ordinary course of business, unrelated to the potential sale of the Property, without the prior written consent of Owner, which may be given or withheld in Owner's sole discretion.
6. Owner expressly reserves the right, at its sole discretion, to reject any or all expressions of interest or offers to purchase an interest in the Property and/or to terminate discussions with any potential purchaser at any time, with or without notice. The Owner will have no legal commitment or obligation to any potential purchase unless and until a written agreement for the sale of the Property has been fully executed and delivered by Owner. Any discussions with respect to the possible sale of the Property are subject to change of price, prior sale, financing, or withdrawal without notice.
7. During the term of this Agreement, the Principal and Broker agrees not to pursue or engage in any transaction involving the Property or contact, directly or indirectly, any party-in-interest relating to the Owner's business or pursue any introduction of any party of interest without the AYN's prior express written consent. Principal and

Broker agree that all communications regarding the Property, requests for additional information, and discussions or questions regarding procedures will be submitted or directed to AYN and not directly with any other party. The Principal and Broker covenant not to use the Evaluation Material to the detriment of the Owner and to use it only in connection with its evaluation of the Property. AYN shall be present in the engagement of any transaction involving the Property with introduced parties-in-interest by the Principal and Broker.

8. The provisions of this Agreement remain in effect with respect to any or all Evaluation Material until the earliest of (i) the date such Evaluation Material is no longer Evaluation Material within the meaning of this Agreement; (ii) the date that a transaction is closed between Owner and Principal; or (iii) 12 months from the date of this Agreement. Notwithstanding anything above, the terms of any sale of the Property will remain confidential.
9. The Principal and Broker each warrant and represent to AYN that Principal and Broker, and all persons and entities owning (directly or indirectly) an ownership interest in the Principal and Broker: (a) are not and will not become a person or entity with whom AYN is restricted from doing business with under regulations of the Office of Foreign Asset Control (“OFAC”) of the Department of the Treasury (including, but not limited to, those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive order (including, but not limited to, the September 24, 2001, Executive Order 13224 Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.
10. The parties agree that Owner is a third party beneficiary of this Agreement and will have the right to seek performance of the obligations of this Agreement. This Agreement embodies the full understanding of the parties and may not be changed orally. This Agreement is governed and construed in accordance with the laws of the State of New York.

Very truly yours,

James Nelson
Avison Young – New York, LLC

[SIGNATURE PAGE TO FOLLOW]



Agreed and acknowledge by:

Principal: _____

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

Broker: _____

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

Return To:

Kate Kabili

Avison Young – New York, LLC

530 Fifth Avenue

New York, New York 10036

kate.kabili@avisonyoung.com