

Confidentiality Agreement

"Recipient":

"Disclosing Party": 9TH AVENUE (DENVER) COMMERCIAL I LLC, a Delaware limited liability company, 9TH AVENUE (DENVER) LAND LLC, a Delaware limited liability company, 9TH AVENUE (DENVER) RESIDENTIAL I, LLC, a Delaware limited liability company, 9TH AVENUE (DENVER) RESIDENTIAL II, LLC, a Delaware limited liability company

"Property": 9th and Colorado, Denver, Colorado

"Transaction": The potential sale of the Property.

Date of Agreement:

This Agreement (this "**Agreement**") is executed by Recipient in favor of Disclosing Party regarding the Property and sets forth the terms and conditions that will apply, in each instance, to the treatment of certain information that Disclosing Party provides to Recipient (additionally, each a "**Party**" and collectively, the "**Parties**") in connection with the Transaction.

In consideration of Disclosing Party providing Confidential Information (as defined below) and Recipient's evaluation thereof, Recipient agrees as follows:

1. Definitions. As used in this Agreement:

"Affiliate" means, with respect to any person, another person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the person specified.

"Confidential Information" means (a) any confidential, proprietary or otherwise non-public information relating to the Transaction or the Property that is disclosed to Recipient or its Representatives (as defined below) by or on behalf of Disclosing Party on or after the date hereof (whether prepared or communicated by Disclosing Party or its Representatives or otherwise), (b) Recipient's evaluation of the Property, the Transaction or any of the proposed terms or conditions of the Transaction and (c) any Work Product (as defined below) using any of the information described in clause (a) above, but excludes (i) information that was, is or becomes generally available to the public other than as a result of a disclosure by Recipient or any of its Representatives in breach of this Agreement, (ii) information that was within the possession of Recipient or any of its Representatives prior to being furnished to Recipient or its Representatives pursuant hereto or is lawfully obtained by Recipient or any of its Representatives thereafter from a source that, in each case, as far as Recipient or such Representatives are aware, is not, by virtue of such disclosure, in breach of any obligation of confidentiality of such source with respect to such information and (iii) information that was independently developed by Recipient or its Representatives without use of, or reference to, the information referred to in subclause (a) of this definition.

"control" means the ability or the power, directly or indirectly, to direct or cause the direction of the management or policies of a person whether through the ability to exercise voting power, by contract or otherwise (and **"controlled"** shall have a meaning correlative thereto).

"Permitted Purpose" has the meaning assigned to such term in Section 2(a).

"person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership or other entity.

"Representatives" means, with respect to Disclosing Party, its directors, officers, employees, members and Affiliates.

"Representatives" means, with respect to Recipient, its Affiliates, directors, officers, employees, members, agents, contractors, attorneys, advisors, current investors, potential co-investors and lenders.

"Work Product" means all memoranda, notes and other documents and analyses developed by Recipient or its Representatives.

2. Restrictions on Disclosure and Use. Except as otherwise set forth in this Agreement, Recipient agrees:

- (a) to acquire the Confidential Information for the purpose of evaluating its possible participation in the Transaction (with Disclosing Party or any other party, herein the “**Permitted Purpose**”) and not to use such Confidential Information for any other purpose; and
 - (b) to keep confidential and not to disclose the Confidential Information to any person (except as set forth in Section 3 hereof) and to use reasonable care in protecting the confidentiality of the Confidential Information.
3. Permitted Disclosure. Recipient may disclose Confidential Information:
- (a) to its Representatives for the Permitted Purpose; provided that (i) such Confidential Information shall not be used for any unlawful purpose, (ii) Recipient informs such Representatives of the confidential nature of such information and directs them to treat such information in accordance with the terms of this Agreement, and (iii) Recipient shall be responsible for any breach of this Agreement that results from the actions or omissions of such Representatives; and
 - (b) in the event that Recipient or any of its Representatives are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any information that Recipient is otherwise required to keep confidential pursuant to this Agreement, provided that Recipient shall, to the extent legally permissible, provide Disclosing Party with prompt written notice of any such request or requirement so that Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event Disclosing Party fails to obtain relief from such compulsory process that, in the opinion of Recipient’s legal counsel, excuses Recipient or any of its Representatives from compliance with such process, Recipient or any of its Representatives may, without liability under this Agreement, disclose that portion of such information that is legally required to be disclosed.
4. Return of Confidential Information. Upon Disclosing Party’s written request or the earlier termination or expiration of this Agreement, Recipient shall destroy (in the case of Confidential Information in electronic form, to the extent technically reasonable) as soon as practical all related Confidential Information, without retaining any copies thereof unless such copies are retained by Recipient or its Representatives to comply with their respective audit or internal compliance policies only or in accordance with applicable law or regulation. Recipient and such Representatives shall hold any such retained information in accordance with the terms of this Agreement, notwithstanding any termination or expiration of this Agreement.
5. Remedies. Recipient agrees that money damages may not be a sufficient remedy for breach of this Agreement and that, in addition to all other remedies available at law or in equity, Disclosing Party shall be entitled to seek equitable relief, including injunction and specific performance, without proof of actual damages, and Disclosing Party shall not be required to post bond or other security as a condition of obtaining such relief.
6. No Relationship. This Agreement does not create a joint venture, partnership, fiduciary duties or any similar relationship between Disclosing Party and Recipient.
7. No Contact. Recipient shall not disclose that discussions regarding the Transaction are occurring, nor shall Recipient communicate with any tenant, lender, property manager, or other party having an interest in the Property without Disclosing Party’s prior written consent.
8. Termination. This Agreement and the Parties’ obligations hereunder shall terminate with respect to all Information on the date falling two (2) years after the date hereof.
9. No Representations. The provision of Confidential Information or any other information does not (i) constitute any representation or warranty regarding Disclosing Party, the Property or the Transaction or that any such information is accurate, or (ii) obligate Disclosing Party to enter into any transaction (including the Transaction) with Recipient. Either party may withdraw from any negotiations or discussions regarding the Property or the Transaction at any time.
10. Brokers. Recipient shall be responsible for and indemnify and hold Disclosing Party harmless against any claim, damage, liability, cost or expense (including attorneys’ fees) for a broker’s or finder’s fee arising from the actions of Recipient or its Representatives.
11. Miscellaneous.

- (a) Governing Law. This Agreement and all matters arising from or related to this Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to any conflicts of law rule that would require the application of the law of any other jurisdiction), and venue shall be in the federal and/or state courts in Los Angeles County.
- (b) Execution in Counterparts. This Agreement may be executed in counterparts each of which shall be an original and both of which taken together shall constitute the same instrument. Transmission by email or other form of electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.
- (c) Entire Agreement. The parties acknowledge and agree that: (i) there are no written or oral understandings, promises, or assurances concerning Recipient's use of confidential information that are not reflected in writing herein; and (ii) there is no contemplated or proposed joint venture or partnership between the Parties. This Agreement is the entire and sole agreement of the Parties with respect to its subject matter. This Agreement may not be changed orally, and no modification, amendment or waiver of any of the provisions contained herein, nor any future representation, promise or condition in connection with the subject matter of this Agreement, shall be binding upon any party hereto unless: (i) made in writing, (ii) expresses clearly the intent to modify, amend or waive provisions of this Agreement, and (ii) is signed by both Disclosing Party and Recipient.
- (d) Severability. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.
- (e) Attorneys' Fees. In the event either party initiates litigation against the other arising from the Agreement, the prevailing party shall be entitled to reasonable legal fees and costs in connection with such suit.

IN WITNESS WHEREOF, Recipient has caused this Agreement to be duly executed and delivered as of the date first written above.

RECIPIENT:

By: _____

E-mail:
Address:

Phone:
Fax:

