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1 IT IS HEREBY STIPULATED by and between Plaintiffs BGC Partners, Inc., G&E
2 Acquisition Company, LLC and Newmark Grubb Knight Frank, (collectively, “**Plaintiffs**”) and
3 Defendants Avison Young (Canada), Inc., Avison Young (USA), Inc., Avison Young-Chicago,
4 LLC, and Mark Rose (collectively, “**Defendants**”) (hereinafter, together, the “**Parties**”) through
5 their respective counsel, as follows:

6 WHEREAS, the Parties expect discovery in this case to require the production of
7 information and documents containing trade secrets and other confidential research,
8 development, and commercially sensitive information of the parties and non-parties; and

9 WHEREAS each party wishes to ensure that such information shall not be used for any
10 purpose other than this proceeding, and shall not be made public.

11 THEREFORE, it is hereby stipulated, and the parties hereby request, that the Court enter
12 a protective order as follows:

13 1. This Protective Order shall govern the handling of all pleadings, documents,
14 deposition transcripts, exhibits, interrogatory responses, admissions, and affidavits or other
15 information produced, given, or exchanged by and among the parties and any other parties or
16 non-parties to this litigation. This Protective Order is binding upon the Parties, their agents and
17 employees, all counsel for the Parties and their agents and employees, and all persons to whom
18 disclosure of Confidential or Highly Confidential Material under the terms of this Protective
19 Order is made. The term “document” or “documents” is used with the broadest meaning
20 possible, and includes, but is not limited to, any writing, recording, electronically stored
21 information, or photographs.

22 2. Except by the prior written consent of the producing party, or by order of this
23 Court, all materials or information produced by any party in this action shall be used solely in the
24 preparation for and conduct of this litigation (including briefs, memoranda, correspondence, and
25 other documents relating thereto) and the cases listed in Exhibit B attached hereto, and shall not
26 be used or distributed for any other purpose. Except by the prior written consent of a third party
27 that has produced materials or information in this case, or by order of this Court, all materials or
28 information produced by said third party in this action shall be used solely for the purposes of

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1 this litigation and the cases listed in Exhibit B attached hereto, and shall not be used or
2 distributed for any other purpose.

3 3. "Confidential Material" includes trade secrets, proprietary business information,
4 commercially sensitive information, personal financial information, tax returns, or other personal
5 information that the Producing party is under a duty to preserve as confidential, or other
6 information the disclosure of which would, in the good faith judgment of the party designating
7 the material as Confidential, be detrimental to the conduct of that party's business or the business
8 of any of that party's customers or clients.

9 4. "Highly Confidential Material" includes (i) personally sensitive information that
10 could be embarrassing or otherwise prejudicial to the person whose information was revealed,
11 (ii) information that relates to the business strategy of the Producing Party or could prejudice the
12 Producing Party in its ongoing business relationships or reasonably prospective business
13 relationships, or (iii) information that could provide a competitive advantage to the receiving
14 party in light of the parties' status as competitors in the real estate brokerage market.

15 5. "Confidential Material" or "Highly Confidential Material" shall not include the
16 Complaint in this matter or any Answer to such Complaint other than exhibits denominated as
17 confidential. Information or material which is in the public domain shall not constitute
18 Confidential or Highly Confidential Material.

19 6. Documents shall be designated as Confidential Material by affixing to them the
20 legend "Confidential." Documents shall be designated as Highly Confidential Material by
21 affixing to them the legend "Highly Confidential." Confidential or Highly Confidential
22 electronic or digital materials shall be so designated either by electronic tag or by letter
23 accompanying the production. The failure to designate any materials with such legend shall not
24 constitute a waiver of the right to later request that such documents be stamped as Confidential
25 or Highly Confidential Material and thereafter assert that such documents contain protected
26 confidential information.

27 7. For electronically stored information ("ESI"), if it is not feasible for a party or
28 third party to mark each file or image as specified in Paragraph 6 at the time of production, then

1 that party or third party shall designate the Confidential or Highly Confidential Material in a
2 cover letter accompanying the production of such ESI. Where feasible, the designating party or
3 third party shall mark the disk, tape, or other electronic media on which said ESI is produced
4 with legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." Whenever such ESI is
5 printed out or copied, every print out or copy shall be marked with the legend
6 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

7 8. Unless otherwise provided herein, Confidential Material may be disclosed only to
8 the following persons, except upon order of the Court or prior written consent of the party
9 producing the Confidential Material: (a) the parties' employees, officers, and directors that are
10 actually engaged in assisting in the preparation of this action for trial or other proceeding, and
11 who have been advised of their obligation hereunder; (b) the parties' legal counsel and their staff
12 in this litigation, (c) the parties' legal counsel in the cases listed in Exhibit B, provided they
13 review this order and shall execute a Declaration in the form attached hereto as Exhibit A prior
14 to disclosure of those documents to such person; (d) the parties' vendors, independent
15 consultants, accountants and/or experts retained to assist in the litigation; (e) commercial copy
16 services, e-discovery vendors, graphics or trial preparation consultants hired by and assisting
17 outside counsel for a party; (f) the Court, court personnel, the jury, and court reporters and
18 videographers, (g) deponents and trial witnesses; and (h) mediators.

19 9. Unless otherwise provided herein, Highly Confidential Material may be disclosed
20 only to the following persons, except upon order of the Court or prior written consent of the
21 party producing the Highly Confidential Material: (a) the parties' in-house legal department,
22 including regular and temporary employees of such counsel; (b) the parties' legal counsel and
23 their staff in this litigation; (c) the parties' legal counsel in the cases listed in Exhibit B, provided
24 they review this order and shall execute a Declaration in the form attached hereto as Exhibit A
25 prior to disclosure of those documents to such person; (d) the parties' vendors, independent
26 consultants, accountants and/or experts retained to assist in the litigation; (e) commercial copy
27 services, e-discovery vendors, graphics or trial preparation consultants hired by and assisting
28

1 outside counsel for a party; (f) the Court, court personnel, the jury, and court reporters and
2 videographers; (g) deponents and trial witnesses; and (h) mediators.

3 10. Notwithstanding the foregoing, in the event that a party or third party provides
4 Confidential or Highly Confidential Material for inspection only, no marking need be made by
5 the producing party or nonparty in advance of the initial inspection and the following procedures
6 shall apply:

7 a. The producing party or third party shall not be considered to have waived the
8 status of Confidential or Highly Confidential Material by not marking it as such prior to such
9 initial inspection; and

10 b. Upon selection of materials or information by the inspecting party, the producing
11 party or third party shall, within twenty-one (21) days (or such longer period as may be agreed
12 upon in writing or ordered by the Court), provide the selected materials in the fashion stated in
13 Paragraphs 1-7 above.

14 11. All persons to whom documents marked as Confidential or Highly Confidential
15 are disclosed in accordance with the terms of this Order (excepting the Court, court personnel,
16 the jury, the parties to these proceedings and their employees, reinsurers, and counsel) shall
17 review this order and shall execute a Declaration in the form attached hereto as Exhibit A prior
18 to disclosure of those documents to such person. The parties shall maintain copies of all such
19 executed Declarations.

20 12. All depositions shall be treated presumptively as Highly Confidential Material
21 and subject to this Stipulation during the deposition and for a period of fourteen (14) days after a
22 final transcript of said deposition is received by counsel for each of the parties. At or before the
23 end of such fourteen-day (14) period, counsel for the party asserting that Confidential or Highly
24 Confidential Material is contained within the deposition testimony shall notify all counsel in
25 writing of those portions that are to be designated Confidential or Highly Confidential Material.
26 Counsel may also request that deposition testimony be designated Confidential or Highly
27 Confidential Material on the record during the deposition.

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1 13. Notwithstanding any other provision in this Order to the contrary, if any third
2 party requests production of Confidential or Highly Confidential Material, the party receiving
3 such request shall, to the extent permitted by law, promptly upon receipt, give written notice to
4 all counsel of record via email, stating the nature of the request and attaching a copy of the
5 request. Any party objecting to the production or disclosure to such third parties shall within the
6 earlier of the deadline for complying with the request or fourteen (14) days of receipt of the
7 request, take action in the appropriate court or courts to prevent or limit such disclosure. If a
8 timely objection is raised in the appropriate court or courts, the Confidential or Highly
9 Confidential Material that is the subject of the objection shall not be produced to the third parties
10 until the objection is ruled on.

11 14. In the event that a party disagrees with a designation of information or a
12 document as Confidential or Highly Confidential Material, the parties shall attempt to resolve the
13 matter without Court intervention. The challenging party must notify the producing party in
14 writing that it disputes the designation of a document or other material as Confidential or Highly
15 Confidential Material. If the producing party does not agree to de-designate such document or
16 material within fourteen (14) days of receipt of such notice, the receiving party may move the
17 Court for an order declassifying those documents or materials; however, disputed documents or
18 material shall continue to be treated as Confidential or Highly Confidential Material until the
19 Court rules otherwise. If such a motion is filed, the burden of proving the Confidential or Highly
20 Confidential nature of the information at issue shall be borne by the party asserting that the
21 information is Confidential or Highly Confidential. If no such motion is filed despite the
22 challenging party giving written notice of its dispute, such documents or material also shall
23 continue to be designated as Confidential or Highly Confidential Material. In the event of any
24 alleged violation of this Order, the parties shall first seek to resolve the alleged violation through
25 prompt and reasonable discussion. In the event such informal efforts fail to resolve the alleged
26 violation promptly, any party to this Order may seek relief from the Court.

27 15. Nothing contained in this Order shall be construed to prejudice any party's right
28 to use documents marked as Confidential or Highly Confidential Material in deposition

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1 preparation and/or testimony, provided that such documents may only be disclosed to: (a) a
2 person who is identified on the face of the document or otherwise to be its originator, author, or
3 recipient of a copy; (b) officers, directors, agents or employees of the party that produced the
4 document; (c) persons entitled to obtain access to Confidential or Highly Confidential Material
5 under this Order; (d) persons otherwise agreed to by counsel (on a witness by witness basis); or
6 (e) as authorized by the Court.

7 16. The inadvertent production of any privileged material shall be without prejudice
8 to any claim that such material or information is protected by the attorney-client privilege, the
9 work-product doctrine, or any other applicable privilege or ground for withholding production.
10 Upon written demand, the receiving party shall return any such inadvertently produced
11 documents and all copies of such documents to the producing party. To the extent that the
12 parties disagree over the application of these principles to any such production or challenge the
13 privileged nature of such material, the receiving party shall not make use of the material in
14 question until the matter is resolved by the Court.

15 17. Producing or receiving Confidential or Highly Confidential Material, or otherwise
16 complying with the terms of this Order shall not operate as an admission by a receiving person
17 that any particular document labeled Confidential or Highly Confidential contains or reflects
18 Confidential or Highly Confidential information.

19 18. No receiving person or other person or entity having access to any Confidential or
20 Highly Confidential Material shall reveal such Confidential or Highly Confidential Material, or
21 the information contained in the Confidential or Highly Confidential Material, to anyone not
22 entitled to receive such Confidential or Highly Confidential Material under the terms of this
23 Order. The inadvertent or unintentional disclosure of Confidential or Highly Confidential
24 Material shall not be deemed a waiver of a party's claim of confidentiality either as to the
25 specific information disclosed or as to any other information relating to that information or to the
26 same or related subject matter. If a receiving person inadvertently or unintentionally discloses
27 Confidential or Highly Confidential Material to persons not authorized to receive such
28 information, the receiving person must immediately inform counsel for the producing person and

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1 take all reasonable steps to retrieve the Confidential or Highly Confidential Material, restore the
2 confidentiality status of the information, and prevent further unauthorized disclosure.

3 19. Upon discovery by a designating party or third party that it has disclosed
4 information that was misdesignated, that party or third party shall provide notice to the parties
5 that the information was misdesignated. The notice shall specify with particularity, and by Bates
6 number if possible, the misdesignated information. The designating party shall then have
7 fourteen (14) days in which to correct the misdesignation by undesignating or redesignating the
8 information in accordance with the procedures herein. Upon notice that any information should
9 be redesignated as Confidential or Highly Confidential Material, the parties receiving such notice
10 shall make a reasonable, good faith effort to ensure that any analyses, memoranda, or notes that
11 were generated based upon such material before its redesignation shall immediately be treated in
12 conformity with any such redesignation.

13 20. Nothing in this Protective Order shall prevent a producing party from using its
14 own Confidential or Highly Confidential Material for any purpose.

15 21. If any party seeks to include Confidential or Highly Confidential Material with, or
16 disclose the content thereof, in any pleading, motion, deposition transcript, or other paper filed
17 with the Court, that party must file a motion seeking leave of court to file such documents and
18 related materials under seal. A redacted version of any under-seal filing should be filed within
19 two (2) business days after any under-seal filing. Any subsequent under-seal filing shall be made
20 in accordance with the procedures of the United States District Court for the District of Nevada.

21 22. If a receiving party wishes to disclose Confidential or Highly Confidential
22 Material at a pretrial hearing, the receiving party must provide advance notice to the disclosing
23 party, and the disclosing party must make a request for the closure or sealing of the transcript of
24 proceedings, and/or the exclusion of persons from the courtroom, to the judge then presiding.

25 23. Unless otherwise ordered by the Court, the parties shall provide each other with a
26 list of documents and things designated as Confidential or Highly Confidential Material that the
27 party intends to use at trial, unless the use would be solely for impeachment or rebuttal, at such
28 time as the list of exhibits is to be exchanged among the parties, but in no event later than thirty

(30) days in advance of trial. Each producing third party whose documents and things will be used at trial, in whole or in part, also will be provided notice within that time by the party that intends to use the same. Any such documents or things may be offered into evidence in open court unless the opposing party or third party obtains a protective order from the Court.

24. The provisions of this Order shall remain in effect and continue to be binding after the conclusion of these proceedings. Any court with jurisdiction over this action shall retain such jurisdiction with respect to this Order for purposes of enforcing its terms. Within fourteen (14) days after the final resolution of the litigation by entry of a final, non-appealable judgment governing the rights and obligations of the parties, the parties shall destroy any Confidential or Highly Confidential Material belonging to any other party and, upon written request, send a written certification to counsel for the other party, within fourteen (14) days thereafter, that such destruction was done, except that Counsel for each party may retain for its own files (and not for further dissemination) copies of documents and things filed with the Court or used in the preparation of documents and things filed with or presented to the Court.

25. Nothing in this order shall prevent Plaintiffs or Defendants from seeking relief under, or seeking to modify the terms of, a protective order in another jurisdiction.

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: August 31, 2017

IT IS SO STIPULATED.

Dated: August 30, 2017

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EXHIBIT A

DECLARATION OF COMPLIANCE

I, _____, declare as follows:

1. My address is _____.

2. My present employer is _____.

3. My present occupation and job description is _____.

4. I received a copy of the Protective Order entered in the proceedings captioned BGC Partners, Inc., et. al. v. Avison Young (Canada). Inc., et. al., Case No. 2:15-cv-00531-RFB-GWF (the "**Litigation**") on _____.

5. I have carefully read and understood the provisions of the Protective Order.

6. I will comply with all the provisions of this Stipulated Protective Order.

7. I will hold in confidence, and will not disclose to anyone not qualified under the Stipulated Protective Order, any information, documents or other materials produced subject to this Stipulated Protective Order.

8. I will use such information, documents or other materials produced subject to this Stipulated Protective Order only for purposes of this present action and the cases listed in Exhibit B attached hereto.

9. Upon termination of this action, or upon request, I will return and deliver all information, documents or other materials produced subject to this Stipulated Protective Order, and all documents or things which I have prepared relating to the information, documents or other materials that are subject to the Stipulated Protective Order, to my counsel in this action, or to counsel for the party by whom I am employed or retained or from whom I received the documents.

10. I hereby submit to the jurisdiction of this Court for the purposes of enforcing the Stipulated Protective Order in this action.

11. I understand that a violation of the Protective Order is punishable as a contempt of Court and may subject me to civil liability. I declare under penalty of perjury under the laws of the United States that the following is true and correct.

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Executed this _____ day of _____, 2017 at _____.

QUALIFIED PERSON

EXHIBIT B

- BGC Partners, Inc., et al. v. Avison Young (Canada), Inc., et al., No. 15-cv-426 (D.D.C)
- BGC Partners, Inc.. et al. v. Avison Young (Canada), Inc., et al., Index No. 652669 2012 E (N.Y. Sup. Ct.)
- BGC Partners, Inc., et al. v. Avison Young (Canada), Inc., et al., No. 2015-CP-10-2068 (S.C.L.)
- BGC Partners, Inc., et al. v. Avison Young (Canada), Inc., et al., No. 2015 L 2186 (Ill.)
- BGC Partners, Inc., et al. v. Avison Young (Canada), Inc., et al., Civil Action No. 15-0001028 (D.C. Super. Ct.)

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