

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 15-81194-CV-MARRA/MATTHEWMAN

BEACHES, INC., a Florida corporation,

Plaintiff,

vs.

MIAMI ASSOCIATION OF REALTORS, INC.,
a Florida corporation, JUPITER-TEQUESTA-HOBE
SOUND ASSOCIATION OF REALTORS, INC.,
a Florida corporation, TERESA KING KINNEY,
WILLIAM "BILL" COLE, JOANNE WERSTLEIN,
ANGELA CALABRIA and JAMARR LYNCH,

Defendants.

MIAMI ASSOCIATION OF REALTORS, INC.,
a Florida corporation and JUPITER-TEQUESTA-HOBE
SOUND ASSOCIATION OF REALTORS, INC.,
a Florida corporation,

Counter-Plaintiffs,

vs.

BEACHES MLS, INC., a Florida corporation, and
REALTORS ASSOCIATION OF THE PALM
BEACHES, INC.

Counter-Defendant.

COUNTERCLAIM

Defendants, Miami Association of Realtors, Inc., ("Miami") and Jupiter-Tequesta-Hobe Sound Association of Realtors, Inc., ("Jupiter") hereby file their Counterclaim against Beaches

MLS, Inc. (“Beaches”) and Realtors Association of the Palm Beaches, Inc. (“RAPB”) and in support thereof alleges:

JURISDICTION AND VENUE

1. This is a counterclaim pursuant to the Declaratory Judgment Act, 28 U.S.C. §2201 (the “Act”), seeking declaratory and injunctive relief as well as damages.
2. Venue is proper in this Court because the relevant acts occurred in the Southern District of Florida and particularly in Palm Beach County, Florida.

PARTIES

3. Defendant/Counter-Claimant Miami Association of Realtors, Inc. (“Miami”) (“MAR”) is a not-for-profit realtor association which has over 38,000 member realtors and is based in Miami, Florida.
4. Defendant/Counter-Claimant Jupiter – Tequesta – Hobe Sound Association of Realtors, (“Jupiter”) (“JTHS”), is a not-for-profit realtor association which has approximately 1,400 member realtors and is based in Jupiter, Florida.
5. Realtors Association of the Palm Beaches, Inc. (“RAPB”) is a realtor association composed of approximately 14,000 member realtors and is based in Palm Beach County, Florida.
6. Plaintiff/Counter-Defendant BEACHES MLS, INC., (“Beaches”), is the wholly owned subsidiary of RAPB and provides multiple listing services.

GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS

Relationship Between the Parties

7. Jupiter and RAPB are competitors in the same market.
8. The market in which Jupiter and RAPB compete is Palm Beach County, Florida.
9. Though Jupiter and RAPB are competitors and operate two (2) separate Multiple Listing Services (MLSs), they share the use of a single shared data base platform, Flex MLS.

10. That sharing is the consequence of an agreement entered into in 2013 wherein Jupiter and RAPB/Beaches agreed to share data in the system run by Financial Business Systems, Inc. (“FBS”) known as the FlexMLS for four (4) years, terminating in July 31, 2017. A copy of the Mediation Settlement Agreement (“MSA”) is attached as “Exhibit 1”. FBS is the vendor or company which operates the FlexMLS shared database system for both Jupiter and RAPB/Beaches. Allegations regarding this lawsuit are reflected in ¶¶’s 32-54 of the Plaintiff’s Complaint.

11. Additionally Jupiter and RAPB/Beaches entered into separate agreements with FlexMLS and true and correct copies of both agreements that govern their agreement with FlexMLS are attached hereto as “Exhibit 2” and “Exhibit 3” (hereinafter “FLEX Agreement”). That agreement provided Jupiter and RAPB equal rights and equal access to the shared FlexMLS database.

12. The fact that Jupiter and RAPB agreed to provide each other equal rights and equal access to the FlexMLS was essential to the agreement as Jupiter and RAPB are competitors in the same market.

13. Independent of any relationship between Jupiter and RAPB, RAPB/Beaches and its predecessor Regional Multiple Listing Service, Inc. (“RMLS”) have had a 16 year relationship with Miami, during which it provided Miami with a data stream of its MLS content, and in turn, Miami provided their MLS content to RAPB.

The Merger

14. In or about May 2015, Miami and Jupiter began discussing a merger between their two realtor associations.

15. The purpose of the merger was to confer benefits to both associations, including but not limited to, greater purchasing power with respect to products such as Supra, decreased overhead, and overall improved efficiency.

16. As part of the merger due diligence the essential parties signed confidentiality agreements to facilitate the flow of information between Miami and Jupiter.

17. As part of the due diligence necessary to the merger, Miami requested a means of obtaining a precise tally of all Jupiter members and listings.

18. Miami and Jupiter determined that the best way to do so was by searching the FlexMLS for Jupiter data.

19. To that end, Jupiter authorized search access and Miami conducted searches.

20. Thereafter Miami and Jupiter determined that the merger should continue forward and decided on a merger structure known as a Reverse Triangular Merger (“RTM”).

21. Under an RTM, unlike a traditional merger, Jupiter continues to exist. Accordingly, there is no transfer of Jupiter’s rights, there is no transfer of the ownership or license to use the copyright from Jupiter and there is no termination of the MSA or the obligation to share MLS listings by operation of law as Beaches claimed in its Complaint. *See* Complaint at ¶ 70.

22. Under the RTM, Jupiter members would continue to have access to their listings in the FlexMLS and Miami members would not, absent purchasing a membership to gain access.

23. On August 14, 2015, Jupiter members voted to approve the merger with Miami.

24. The merger closed on September 22, 2015.

RAPB/Beaches Reaction to the Proposed Merger

25. RAPB/Beaches vehemently opposed the proposed merger from the time it became public.

26. RAPB/Beaches has stated, through its executives, that it opposed the merger.

27. RAPB/Beaches has stated, through its executives that it did not want Miami to enter its region.

28. RAPB/Beaches made clear that it did not want a competitor in its market.

29. RAPB/Beaches sentiment was manifested in its deliberate and coordinated effort to block the merger.

30. The tactics that RAPB used to oppose the merger, included, but were not limited to, sending internet and email flyers discouraging Jupiter members from merging with Miami, encouraging Jupiter members to merge with RAPB rather than Miami, unilaterally cutting off the 16 year old data stream it had with Miami and sending letters from RAPB counsel threatening to cut off MLS access to the FlexMLS by Jupiter members even though they contracted to receive that service. A true and correct copy of the letter from John Sherrard dated August 6, 2015 is attached hereto as "Exhibit 4".

31. RAPB/Beaches effort was to achieve a single goal: to monopolize its market by forcing Jupiter to merge with it and keep competition out of the marketplace.

32. Miami and Jupiter, however, ceased their merger efforts on September 22, 2015.

33. Miami and JUPITER did not agree with Mr. Sherrard's letter or assertions that pursuant to federal copyright law, Beaches could terminate Jupiter's access to the FlexMLS.

34. The FlexMLS is a computerized multiple listing service database where real estate agents and broker members submit real estate listings. The MLS database facilitates the exchange of information among members about one another's listings so agents can cross company lines to sell one another's houses and can show clients all houses on the market as listed. Membership in an MLS is considered a private offer of cooperation and compensation by listing brokers to other real estate brokers and their agents who are members of the MLS.

35. When it became clear that the merger would not fall victim to RAPB/Beaches intimidation efforts, RAPB/Beaches doubled down on its effort to derail the merger by filing a lawsuit wherein, among many spurious and hollow accusations, it claimed to be the sole owner and operator of the entire FlexMLS. *See* Complaint at ¶¶'s 24-28.

36. Indeed, as has been made clear in public statements under penalty of perjury, Beaches does not recognize any ownership interest by Jupiter in the FlexMLS shared data base nor in their members' listings entered into the System, which is contrary to the agreement between the parties.

37. RAPB's executives have also provided sworn testimony stating that it is Beaches' position that Jupiter has no ownership interest in the FlexMLS system nor in their members' listings therein, which is contrary to the agreement between the parties.

38. Moreover RAPB/Beaches, through its attorney and other pronouncements, has stated that it will unequivocally terminate Jupiter access to the MLS regardless of the structured merger and regardless of the agreements that bind Jupiter and RAPB/Beaches.

39. RAPB/Beaches has forced this issue which is now ripe before this Court.

COUNT I
Declaratory Relief

40. Miami and Jupiter hereby reincorporate paragraphs 1-38 as set forth herein.

41. Under the plain language of the MSA and FLEX Agreement, Beaches is not the sole proprietor of the MLS and data base.

42. Under the plain language of the MSA and FLEX Agreement, Jupiter has equal rights, equal access and equal ownership to the FlexMLS and data base.

43. RAPB through Beaches takes a position contrary to the MSA, FLEX Agreement and controlling law.

Wherefore, Miami and Jupiter seek a declaration from this Court that:

- a. RAPB and Beaches have no right to terminate FlexMLS access to Jupiter's members by virtue of the structure of the planned merger, an RTM;

- b. That RAPB and Beaches be enjoined from terminating such access on the basis it will irreparably harm Jupiter's members;
- c. Award Jupiter its court costs; and
- d. Provide such other relief as necessary to protect Jupiter's access to all RAPB/Beaches MLS data.

COUNT II
Breach of Contract

44. Jupiter hereby reincorporates paragraphs 1-39 as set forth herein.

45. Beaches and RAPB have made assertions (under oath and publicly) that erroneously state that Jupiter has no right or ownership interest in the FlexMLS.

46. Based on that premise, RAPB refuses to allow Jupiter to authorize users as they wish to search the FlexMLS.

47. In refusing to allow Jupiter the ability to authorize users to access the FlexMLS, RAPB has breached the MSA and Flex Agreement.

48. In refusing to allow Jupiter the ability to authorize users, RAPB has damaged their ability to quickly and efficiently serve their members causing problems between Jupiter and its members.

49. In threatening to preclude Jupiter's access to the FlexMLS, RAPB has anticipatorily repudiated the MSA and Flex Agreement.

50. Jupiter has been damaged as a result of RAPB's actions in delaying the merger.

51. Jupiter will be irreparably harmed if RAPB is permitted to continue to breach the contract after the merger.

Wherefore, based on the foregoing, Jupiter respectfully demands injunctive relief, continue allowing Jupiter members access to the FlexMLS, together with a judgment for damages, costs and such further relief as this Court deems appropriate.

COUNT III
Tortious Interference with Business Relations

52. Miami and Jupiter hereby reincorporates 1-39 as if set forth herein.

53. Miami established a favorable business relationship on which it has rights in its planned merger with Jupiter.

54. RAPB and Beaches had knowledge of this relationship from the time the merger was announced from July 30, 2015.

55. Despite knowing about this relationship, RAPB and Beaches have had an intentional and unjustified interference with this relationship attempting to break the relationship by a) disseminating false and misleading advertisements about the effect of the merger; b) taking the position and repeatedly communicating to Jupiter's members, without any legal basis that Jupiter members' MLS access will be cut off; and c) making false statements to the media and the court about Miami's motives.

56. As a result of these actions, Miami and Jupiter have been damaged.

Wherefore, based on the foregoing, Miami and Jupiter respectfully demand a judgment in their favor with an award of damages together with such other relief as this Court deems just and necessary.

COUNT IV
Trade Libel

57. Miami realleges paragraphs 1-39 as if fully set forth herein.

58. On or about August 10, 2015, RAPB sent an e-mail to Jupiter members and other third parties. A copy is attached as "Exhibit 5".

59. Among the statements made were "If the merger goes through, Miami members will now have complete access to your MLS data - Are you willing to give your data away?"

60. After filing this lawsuit, RAPB published that Miami was illegally accessing its data to create the impression Miami was working to harm realtors in South Florida.

61. These statements were false.

62. These statements were publically disseminated to realtors, brokers and agents throughout South Florida and caused realtor members of Miami to leave Miami and further caused non-members to refrain from joining Miami.

63. In addition, RAPB made the following statement on its website: "The unauthorized and unlawful intrusion into the Flex system and access to the Beaches MLS database was only just discovered in the past few days and, in the view of the Beaches Board of Directors posed a serious threat to the integrity of the valuable database of MLS systems our subscribers depend upon every day for their businesses. Therefore immediate action was warranted."

64. This statement does not convey that it is an allegation asserted in a lawsuit, but rather states as a fact that the access by Miami was both unauthorized and unlawful and implied that Miami would threaten the integrity of the FlexMLS data.

65. RAPB had no basis to make this false assertion on its website.

66. As a result of these false statements, Miami has been damaged.

Wherefore, Miami demands judgment for damages, costs and such other relief as is necessary under the circumstances.

COUNT V
Jupiter's ACPA Claim Against RAPB

67. Jupiter realleges allegations 1-39 as if fully set forth herein.

68. This is a claim under the Anti-cybersquatting Consumer Protection Act (“ACPA”) 15 U.S.C. § 1125 (d).

69. Jupiter has been doing business since 1971 under the name of Jupiter Tequesta-Hobe Sound Realtors Association.

70. Its name is a distinctive and famous name within the meaning of federal law.

71. In July 2015, at a time in which Jupiter was attempting to close the merger with Miami, Defendant RAPB reserved the domain name JTHSCouncil.com after they became aware that this was the planned name/identity for JTHS after the merger.

72. The name is identical and/or confusingly similar to Jupiter’s mark.

73. Defendant RAPB reserved this name in order to prevent Jupiter from using it and with bad faith intent to profit from it.

Wherefore, Jupiter demands damages against RAPB together with cancelation of the improper registration and restoration of the name to Jupiter, together with such other relief as this Court deems just and necessary.

COUNT VI
Antitrust 15 U.S.C. §2

Miami and Jupiter hereby reincorporates paragraphs 1-39 as set forth herein and for Count VI of Defendants’ Counterclaim further allege:

74. Beaches is a wholly owned subsidiary of RAPB.

75. Beaches, in its actions, is indistinguishable from its parent RAPB.

76. Beaches has over 14,000 subscribers.

77. Currently, members of RAPB have access to the Flex MLS as a product of their Beaches MLS fee.

78. Beaches listings account for approximately 90% of all properties listed in the Palm Beach, Jupiter region.

79. The FlexMLS of FBS is composed chiefly of two associations' MLS listings: Palm Beach and Jupiter.

80. RAPB, Jupiter and Miami are competitors.

81. Jupiter has approximately 1,400 members.

82. Currently Jupiter members have access to the shared FlexMLS as a product of their Jupiter MLS fee.

83. Indeed, RAPB and Jupiter both share access to the FlexMLS as a consequence of the settlement agreement (MSA) binding the parties.

84. Notwithstanding that fact, Beaches has taken the position in this litigation that, Beaches alone can determine who has access to the shared MLS data base (in its entirety).

85. Beaches has taken the position that as soon as Jupiter information is put into the FBS database it is Beaches property.

86. Beaches has taken the position that when Jupiter merges with Miami, Beaches will preclude Jupiter from accessing the FlexMLS, and along with it, Jupiter's own listings.

87. Beaches has taken the position that when Jupiter merges with Miami, Jupiter members can only enjoy access to the FlexMLS if Jupiter members *join* RAPB/Beaches.

88. Beaches, through its representatives, has said that Beaches does not want a competitor (Miami) in its market.

89. Beaches, through its representatives, has said that any merger between Jupiter and Miami would create additional competition in its market.

90. Beaches, through its representatives, has said that it does not want Jupiter and Miami to merge.

91. The merger allows all realtors in the Jupiter-RAPB region access to less expensive real estate products.

92. The merger allows all realtors in the Jupiter-RAPB region access to a greater variety of real estate products.

93. Beaches has acknowledged in sworn testimony before the Court that it feels threatened by the possibility of Miami's presence in its region.

94. To that end, during the pendency of these proceedings, Beaches unilaterally cut Miami off from a data feed Miami had received from Beaches for nearly 16 years.

95. Similarly, Beaches has threatened to cut Jupiter off from the FlexMLS on numerous occasions.

96. Beaches' activity in threatening to hijack all the information in the FlexMLS (inclusive of Jupiter data) and hold it hostage from Jupiter is anticompetitive.

97. Beaches' activity in threatening to hijack all the information in the FlexMLS (inclusive of Jupiter data) and hold it hostage from Miami is anticompetitive.

98. Beaches' efforts to derail the merger between Miami and Jupiter and in doing so, prevent competition in its market, is anticompetitive.

99. Beaches' efforts to derail the merger between Miami and Jupiter have a single goal in mind: to secure RAPB's monopoly over the Palm Beach-Jupiter region.

100. Were Beaches successful in cutting off Jupiter and Miami from the FlexMLS, Beaches would have unilateral control over an MLS that accounts for 90% of listings in the RAPB-Jupiter region.

101. Beaches' efforts have already demonstrated a dangerous probability of actually achieving monopoly power by (1) filing a lawsuit as a pretext to derail the merger between Jupiter and Miami, (2) unequivocally stating that it will cut off Jupiter from FlexMLS access if the merger is consummated and (3) already doing so with respect to Miami.

WHEREFORE based on the foregoing, Miami and Jupiter respectfully demand a judgment in their favor and compensatory damages, treble damages, prejudgment interest, post-judgment interest and such further relief as this Court deems appropriate.

COUNT VII
Unfair Trade Practices

102. Miami realleges paragraphs 1-39 as fully set forth herein.

103. On or about August 28, 2015, Miami ceased the updating of the data feed for the MLS system to Palm Beach members.

104. Miami informed RAPB and Beaches MLS through its counsel and asked them to remove the remaining data, however, the RAPB refused to do this.

105. As a result of this refusal, the MLS data is still being used by Palm Beach and made available to RAPB members. This data is no longer current and as a result has led to the dissemination of false, incorrect, inaccurate and outdated information for real estate listings from the Miami MLS.

106. Additionally, RAPB/Beaches has claimed ownership of the Miami data and refused to remove the active data which is out of date and has advertised their intent to keep all of the valuable off market data in their system without authorization from Miami.

107. Since the date of the cessation, there have been over 50,000 changes to the database that have not been updated on the data remaining in the RAPB/Beaches.

108. This has a result of allowing for Miami to look like it is permitting false and misleading information in the market place, when RAPB refused to correct this.

109. This violates Florida Statute 501.203.

Wherefore, Miami demands judgment against RAPB and Beaches to:

- a. Stop disseminating the incorrect data, remove all Miami historical off market data; and
- b. Award such damages against RAPB and Beaches.

Respectfully submitted,

/s/ Steven W. Davis

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E-mail: gary@naglelawfl.com

*Attorney for Jupiter Tequesta Hobe Sound
Association of Realtors, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 28, 2015, a true and correct copy of the foregoing was filed with the Clerk of Court using CM/ECF thereby serving all parties and counsel of record on the attached Service List by electronic notification generated by CM/ECF.

/s/ Steven W. Davis

Steven W. Davis

SERVICE LIST

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Exhibit 1

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IN THE CIRCUIT COURT FOR THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR PALM BEACH
COUNTY, FLORIDA

CASE NO: 502013CA006927XXXMB AG

JUPITER, TEQUESTA, HOBE SOUND
ASSOCIATION OF REALTORS, INC.,
Plaintiff,

vs.

REGIONAL MULTIPLE LISTING
SERVICE, INC., et al.,
Defendants.

MEDIATION SETTLEMENT AGREEMENT

The parties and their counsel, having met with W. Jay Hunston, Jr., Certified Circuit Court Civil Mediator, for mediation in the above-styled action on June 11, 2013, and having resolved all disputes between them, agree as follows:

1. In consideration of the mutual covenants and conditions contained herein, and in full settlement of all disputes among them, Plaintiff, JUPITER, TEQUESTA, HOBE SOUND ASSOCIATION OF REALTORS, INC. ("JTHS") and Defendants, REGIONAL MULTIPLE LISTING SERVICE, INC ("RMLS"), REALTORS ASSOCIATION OF THE PALM BEACHES, INC ("RAPB"), and REALTORS ASSOCIATION OF ST. LUCIE, INC. ("RASL"), on behalf of themselves and as shareholders of RMLS, agree to the terms and conditions of this Mediation Settlement Agreement. Agreement to and entry into this Mediation Settlement Agreement shall not be deemed an admission of any fact, issue or liability in this case.

2. RAPB shall pay to JTHS the settlement sum of \$125,000.00 ("Settlement Sum"),

3. Payment of the Settlement Sum shall be made as follows:

A. One lump sum payment of \$125,000.00, payable within thirty (30) days after dissolution of RMLS; and

B. Payment shall be made payable to and c/o the trust account of JTHS' undersigned attorney; and

C. Time is of the essence of this payment.

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4. The parties agree that RMLS shall be dissolved and its affairs wound up on or before September 30, 2013.

5. All shareholders of RMLS shall be entitled to download complete electronic copies of RMLS' data through the Flex Termination Date as defined below and RMLS' membership information, as of the date of dissolution.

6. No shareholder, directly or indirectly, shall be entitled to use the website, trade name, phone number, web address registration, any similar name or logo of RMLS after its dissolution.

7. RAPB shall receive all assets of RMLS and assume all liabilities of RMLS as of the date of dissolution, other than the employment contract with Wes Wiggins, and the FBS Data Systems ("Flex") contract, which are dealt with below.

8. JTHS shall not receive any assets or assume any liabilities of RMLS as of the date of dissolution, other than the employment contract with Wes Wiggins after dissolution and JTHS waives any interest it may have in or claim to RMLS.

9. The above lawsuit shall be dismissed, with prejudice, within ten (10) days of the date of this Mediation Settlement Agreement, with the reservation of jurisdiction pursuant to paragraph 25 below, and the pending Complaint filed by RAPB and RASL with NAR shall be withdrawn within ten (10) days of the date of this Mediation Settlement Agreement.

10. The parties agree to each enter into separate contracts with Flex for MLS software services for the balance of RMLS' contract (July 2017), hereinafter referred to as the "Flex Termination Date", and agree to cooperate in obtaining the agreement of Flex to assign RMLS' existing contract to each shareholder on its prorata basis.

11. The parties agree to make available, each to the other, all exclusive programs such as My Condo Plans which are distributed through the Flex IDX until the Flex Termination Date, whether currently existing or subsequently acquired through the Flex Termination Date on the same terms and conditions.

12. The parties will continue to share listing data through the Flex Termination Date.

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13. RAPB shall cause to be transferred to JTHS any domains which include the name JTHS and JTHS shall provide information required by GoDaddy to effect that transfer

14. The parties agree to establish an MLS Compliance Task Force until the Flex Termination Date, which shall consist of two members each from RAPB, RASL and JTHS until the merger of RAPB and RASL, after which the Task Force shall consist of three members from the merged RAPB/RASL entity and three members from JTHS.

15. All parties shall continue to cooperate in submitting and using common data forms and shall have the right to aggregate and display listings in a common IDX or RETS feed, as is currently in use, through the Flex Termination Date.

16. The parties agree to have a Supra lock box inventory and audit performed for RMLS, with each party paying for the lock boxes it has.

17. The parties shall continue to provide to members of each Association shared key and lock box services, but no other services or training, through the Flex Termination Date.

18. The fine assessed by RMLS against JTHS in the amount of \$60,000.00, shall be withdrawn.

19. RMLS shall continue to employ Wes Wiggins through the date of dissolution and winding up of RMLS, at which time RMLS assigns and JTHS hereby assumes and saves RMLS harmless from the employment contract.

20. The parties shall execute and exchange mutual releases, each of the other, excepting only the terms and conditions of this Mediation Settlement Agreement.

21. Each party shall bear its own attorneys' fees and costs of this action and of all other disputes between them, including the NAR Complaint.

22. This Mediation Settlement Agreement shall not be filed with the Court in the above-styled action, except for enforcement purposes or pursuant to Court Order. Other than discussions between the parties, their immediate families, their respective attorneys, directors, accountants, government officials, and self-regulatory bodies, all parties and their attorneys and agents agree, acknowledge and consent that they shall not in any method or manner publish or disseminate any information concerning the settlement or the terms of this Mediation Settlement

JTHS
WFW

Agreement with any other party not specifically authorized by this Mediation Settlement Agreement to receive such information.

23. This Mediation Settlement Agreement may be executed by facsimile signatures and in multiple counterparts, each of which shall be deemed an original.

24. The parties shall execute and exchange such other and further documents as may be reasonably necessary to effectuate the terms and conditions of this Mediation Settlement Agreement

25. The Court in this action shall retain jurisdiction to enforce the terms and conditions of this Mediation Settlement Agreement.

DATED: June 11, 2013.

JUPITER, REQUEST, HOBE SOUND
ASSOCIATION OF REALTORS, INC.

By: [Signature]

[Signature]
Gary J. Nagle, Esq.
Atty. for JTHS

REALTORS ASSOCIATION OF THE PALM
BEACHES INC.

By: [Signature] President

REALTORS ASSOCIATION OF ST. LUCIE,
INC.

By: [Signature] PRESIDENT

[Signature]
John Edgar Sherrard, Esq.
Atty. for RAPB and RASL

REGIONAL MULTIPLE LISTING
SERVICE, INC.

By: [Signature] G.M.

Joseph R. Boyd, Esq.
Atty. for RMLS

Agreement with any other party not specifically authorized by this Mediation Settlement Agreement to receive such information.

23. This Mediation Settlement Agreement may be executed by facsimile signatures and in multiple counterparts, each of which shall be deemed an original.

24. The parties shall execute and exchange such other and further documents as may be reasonably necessary to effectuate the terms and conditions of this Mediation Settlement Agreement.

25. The Court in this action shall retain jurisdiction to enforce the terms and conditions of this Mediation Settlement Agreement.

DATED June 11, 2015

JUPITER, TEQUEST, HOBE SOUND
ASSOCIATION OF REALTORS, INC

By: _____

Gary J. Nagle, Esq.
Atty. for JTHS

REALTORS ASSOCIATION OF THE PALM
BEACHES, INC.

By: _____

REALTORS ASSOCIATION OF ST. LUCIE,
INC.

By: _____

John Edgar Sherrard, Esq.
Atty. for RAPB and RASL

REGIONAL MULTIPLE LISTING
SERVICE, INC.

By: _____

Joseph R. Boyd, Esq.
Atty. for RMLS

Exhibit 2

Assignment of MLS Software License and Data Processing Service Agreement

THIS ASSIGNMENT assigns the MLS Software License and Data Processing Service Agreement (together with any amendments of it, the "RMLS Agreement") by and between Financial Business Systems, Inc. ("FBS") and Regional Multiple Listing Service, Inc. ("RMLS-FL") by removing RMLS-FL as a party to the RMLS Agreement and replacing it with independent agreements between FBS and each of REALTOR Association of the Palm Beaches, Inc. ("RAPB"), Jupiter-Tequesta-Hobe Sound Association of REALTORS, Inc. ("JTHSA"), and REALTOR Association of St. Lucie, Inc. ("RASL") (referred to herein collectively as "Customers", with each entity being a "Customer" and all together being the "Customers"). FBS and each Customer are individually a "Party" and collectively the "Parties."

Background

RMLS-FL currently is owned by RAPB, JTHSA, and RASL ("Shareholders"). Pursuant to the attached Mediation Settlement Agreement ("Settlement"), the Shareholders have agreed to dissolve RMLS-FL on or before September 30, 2013 ("Dissolution").

To effectuate the Settlement and Dissolution, each Customer desires to enter into an independent contract with FBS for the Flexmls System and Services currently being provided to them together by FBS through the RMLS Agreement. The Shareholders desire to continue to share the Flexmls System and Services through a single system provided by FBS but they desire independent contractual relationships with FBS.

FBS agrees to terminate the RMLS Agreement with regard to RMLS in exchange for the independent contracts with each Shareholder as outlined in the terms below.

Agreement

For good and valuable consideration to each Party, the Agreement is hereby Amended as follows:

1. Termination of Agreement with RMLS-FL. By mutual agreement of the parties, the Agreement is terminated as to RMLS-FL pursuant to Section 14(a)(i) of the Agreement upon payment to FBS of all sums owing by RMLS-FL for services rendered to date under the terms of the Agreement.
2. Independent Agreements Between Each Customer and FBS. By operation of this Assignment, each Customer becomes a party to an agreement with FBS, the terms of which are identical to the RMLS Agreement, except as provided herein. This Assignment is intended by the Parties to function with regard to each Customer as a partial assignment to it of the RMLS Agreement but with the effect that three separate agreements are created. By operation of this Assignment, each Customer is now a direct and independent Customer of FBS under the terms of a separate agreement between it and FBS (each a "Customer Agreement"; "RAPB Agreement" refers to the Customer Agreement between RAPB and FBS, "JTHSA

Agreement” refers to the Customer Agreement between JTHS and FBS, and “RASL Agreement” refers to the Customer Agreement between RASL and FBS).

3. Participant and Subscriber Tracking. FBS shall add a data field to the FlexMLS System on the record of each office (brokerage, appraisal, or other) indicating the Customer(s) from which that office purchases access to the FlexMLS System (“Origin Field”). Any Customer will be able to edit the Origin Field. The FlexMLS System will track changes to the Origin Field. With regard to any Customer, a brokerage office is that “Customer’s Participant” if the Origin Field indicates the office purchases MLS services from that Customer; an office can be the Participant of more than one Customer.
4. Shared System and Joint MLS Committee. FBS will fulfill its responsibilities to each Customer under the Agreement using the Flexmls System currently installed and being used jointly by each of the Customers. Decisions that FBS determines must be uniform across the FlexMLS System shall be made by a Joint MLS Committee to be formed by Customers, provided that any Customer may commission changes to the Flexmls System from FBS provided those changes do not affect the appearance or user experience of the Flexmls System for offices who are other Customers’ Participants. Any such changes shall be addressed by separate agreements between Customer and FBS, and each Customer shall be responsible to FBS for the cost of its own customizations, if any.
5. Administrative Access. Each Customer shall have full access to the administrative controls of the system needed to service their respective members. Each Customer understands that the System is shared among them and that most administrative changes impact all. Each Customer agrees that FBS is not liable in any way for any changes to the System by any Customer.
6. Data Ownership. With regard to any Customer, the term “Customer Information” as it is used in the Agreement refers to office, agent, listing and other records associated with offices that are that Customer’s Participants. Pursuant to the terms of the Settlement, each Customer and its Participants are entitled to use Customer Information of all the Customers, and the Customers agree to share information with each other through the term of the Agreement. Each Customer agrees that allowing each Customer access to the entire set of Customer Information as required by the Settlement does not violate Section 9(a) of the Agreement..
7. Joint liability. The customers are not jointly liable to FBS for the contracts created by this assignment. Each Customer is liable only for its own contract with FBS.
8. Contract minimums. Footnote 1 on Exhibit A of the Agreement is hereby deleted.
9. Volume Discounts. Footnote 3 on Exhibit A of the Agreement is amended so that volume discount pricing is based on the total subscribership of all three Customers and any new MLSs taken together.

10. General. In all other respects, each and every term of the Agreement, including billing, Customer responsibilities, indemnity, and liability in every respect, shall apply to each Customer and each Customer shall be entitled to independent service and responsibility from FBS independent of each other Customer.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the first date set forth below.

Financial Business Systems, Inc.

DocuSigned by:
Michael Wurzer
By: _____
EA6994D690B543E
Michael Wurzer
Chief Executive Officer

Date: 7/23/2013

Regional Multiple Listing Service, Inc.

DocuSigned by:
Wes Wiggins
By: _____
18983714DA8D4E7...
Wes Wiggins
Chief Executive Officer

Date: 7/23/2013

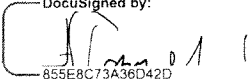
REALTOR Association of the Palm Beaches, Inc

DocuSigned by:
Carol Van Gorp
By: _____
1F617839B00D485...

Chief Executive Officer
Title

Date: 7/23/2013

Jupiter-Tequesta-Hobe Sound Association of REALTORS, Inc.

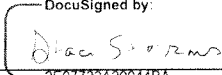
DocuSigned by:

855E8C73A36D42D

By: _____

President
Title

7/24/2013
Date: _____

REALTOR Association of St. Lucie, Inc.

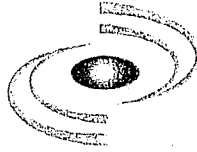
DocuSigned by:

2E97722A29044BA

By: _____

CEO
Title

7/24/2013
Date: _____

Exhibit 3



FBS Data Systems

A Division of Financial Business Systems, Inc.

November 5, 2012

Wes Wiggins
Regional MLS Florida
140 Intracoastal Point Dr
Suite #310
Jupiter, FL 33477

Dear Wes,

I take this opportunity to personally thank the Regional MLS Florida for contracting with FBS for flexmls® services. Copies of the endorsed contract document and accompanying exhibits are enclosed. FBS values our business relationship with your organization and the opportunity to serve its staff and members in the coming years.

flexmls® evolves and grows as a direct result of the comments submitted by our clients; I invite your feedback and suggested future improvements for the flexmls® system.

Please call upon myself, Dave Rifkin or Melissa Brown for your account service needs.

Sincerely,

A handwritten signature in black ink, appearing to read 'Troy D. Feeken', with a long horizontal flourish extending to the right.

Troy D. Feeken
Senior Account Representative
FBS – Creators of flexmls®
An Employee Owned Company
troy@fbsdata.com

MLS SOFTWARE LICENSE AND DATA PROCESSING SERVICE AGREEMENT

THIS AGREEMENT is made and entered into as of the last date signed below by and between Financial Business Systems, Inc. ("FBS"), having a principal office and place of business in Fargo, North Dakota, and Regional MLS Inc. ("Customer"), a Florida corporation. FBS and Customer are individually a "Party" and collectively the "Parties".

IN CONSIDERATION of the mutual agreements, promises and covenants set forth herein, the Parties agree as follows:

1. Exhibits. The following Exhibits are attached to this Agreement and incorporated by reference:

Exhibit A – Fees and Charges

Exhibit B – List of Software

Exhibit C – Other Terms and Conditions

Exhibit D - System Conversion Schedule

Exhibit E – Training and Live Data Entry Approval Form

2. Software License.

In consideration for the fees and charges set forth on Exhibit A, FBS grants Customer and its subscribers a non-exclusive, non-transferable license to use, throughout the term of this Agreement, and solely for the purpose of conducting Multiple Listing Service ("MLS") business, the software listed on Exhibit B, subject to the terms and condition of this Agreement, any additional terms and conditions set forth on Exhibit C, and any other terms and conditions set forth in any individual licenses accompanying any software physically distributed to individual subscribers. The license is granted to the subscribers of Customer and its subscribers agree (a) not to use the licensed software for any purpose other than conducting MLS business, (b) not to grant access to the MLS data processing system developed by FBS (the "System") to any person who is not authorized under this Agreement, (c) to use reasonable means to protect the confidentiality of their logins and passwords to the System, and (d) not to copy, reverse engineer or in any other way interfere or denigrate FBS's rights in and to the System and related software. Customer shall be responsible for compliance with the terms of this Agreement by its subscribers.

3. System Set-up; Data Conversion; System Acceptance. The schedule for converting Customer and its subscribers to the System is set forth on Exhibit D, and a form for Customer approval of the commencement of training and live data entry is attached as Exhibit E. The Parties agree to adhere to the schedule and understand that delay on one step in the process is likely to create delays in other steps and, ultimately, the Installation Date (as defined in Section 4, below). Each Party will keep the other adequately informed of its progress and any potential for delays. The Parties agree to work together to complete the conversion as scheduled and communicate with each other regarding any need for schedule changes.
 - a. *FBS Responsibilities*. For the fees and charges set forth on Exhibit A, FBS agrees to perform the System setup and other data conversion and System installation tasks outlined on Exhibit D and Exhibit E (as applicable), which tasks include writing a software program or programs to convert Customer's listing data and photos from Customer's current system for use in the flexmls System. Such conversion shall include all listing and subscriber information, along with property photos.
 - b. *Customer Responsibilities*. To help ensure a timely conversion, Customer agrees to complete the System Set-up and Conversion Guide provided by FBS and also timely perform all the input, review, feedback and other tasks outlined on Exhibit D and otherwise reasonably requested by FBS in connection with the conversion, including without limitation, Customer shall (i) provide FBS with the data input forms currently being used, make arrangements for delivery to FBS of any data and photos necessary for system conversion, and (iii) Customer shall verify the accuracy and correctness of the

system setup and data conversion, and promptly notify FBS of any inaccuracies. Customer shall be responsible for any fees from Customer's previous vendor for delivery of the data and photos to FBS.

If Customer fails to provide timely approval or feedback on any item specified on Exhibit D, FBS shall be entitled to presume that Customer has given approval of that stage in order to try to keep the conversion on schedule. As agreed above, however, both Parties understand that delay on any one stage may very well result in delay of the go live date.

4. Installation Date. The "Installation Date" or "go live" date is the first date on which Customer's subscribers begin entering listings into the flexmls System following completion of the subscribership training described in Section 6, below. At least two (2) weeks prior to the planned commencement of subscribership training as outlined on Exhibit E, Customer shall complete Exhibit E ("Go Live" Approval Form), either agreeing to proceed as scheduled or refusing to proceed as scheduled. If Customer fails to timely return Exhibit E, FBS shall be entitled to presume that the "go live" dates originally scheduled are approved. In the event Customer does not approve of the go live dates, Customer shall provide FBS with sufficient written details as to the problems with the data conversion to allow FBS to correct the identified problems. As soon as practical thereafter and in no event more than three (3) business days following receipt of such details, FBS shall inform Customer whether the identified errors are correctable by FBS given the data provided from Customer's prior vendor and whether such corrections will require an adjustment to the training and go live schedule, in which case Customer and FBS agree to work together in good faith to establish a new schedule. If Customer and FBS cannot agree on a new schedule, then either of the Parties may terminate this Agreement as provided in Section 14(a)(ii), below.
5. System Access. The System is accessed by subscribers through the internet on the World Wide Web at the URL www.flexmls.com (or another URL established by FBS), with up-to-date web browsers. The System is hosted on FBS's computer hardware servers, which are connected to the internet for access by Customer. As with any internet-based system, access to the System is dependent on each user having access to the internet from a local or other internet Service Provider. FBS is not responsible for providing or servicing Customer or its subscribers regarding their access to the internet. FBS is only responsible for ensuring that the System is accessible from the internet once Customer is connected to the internet.
6. Initial and On-going Training. FBS will provide up to three (3) days of training to Customer's office staff and trainers ("MLS Training"), up to eight (8) days of training for Customer's subscribers ("Subscribership Training"), and up to eight (8) webinar training sessions capable of training 1,000 subscribers per session. The MLS Training will include training on the administrative module and "train the trainer" training on subscribership use of the System. FBS and Customer will agree on the specific format and timing of the Subscribership Training. Customer is responsible for any costs associated with the training facility. Training requested by Customer beyond the MLS Training and Subscribership Training provided in this Section 6 will be charged at FBS's then-current rate for training plus travel and lodging expenses.
7. Technical Support. FBS will provide technical support as provided on Exhibit F. In addition to such technical support, Customer's staff shall have all hours access to an emergency mobile phone to contact FBS in the event the System is down.

8. System Performance Level Guaranty. FBS warrants that the Average Page Delivery (“APD”) time for all users and all pages of the system, in the aggregate, over any two (2) week period will not exceed two (2) seconds (the “Benchmark”), regardless of the number of users and regardless of the addition by FBS of any other customers. APD shall be the elapsed time between the moment a request is received by FBS’s servers until the moment the complete response to the request is delivered from FBS’s servers. During the term of this Agreement, FBS agrees to maintain daily System performance statistics, including APD statistics, and provide such statistics to Customer within three (3) business days of a request. If the performance statistics show that the flexmls System has failed the Benchmark for three (3) or more days over any thirty (30) day period, then a ninety (90) day testing period shall begin and FBS shall provide Customer with reporting on a daily basis until the flexmls System has met the performance warranty for sixty (60) consecutive days. If FBS cannot sustain the performance warranty for sixty (60) consecutive days within the ninety (90) day testing period, Customer may elect to terminate this Agreement with thirty (30) days advance notice to FBS.
9. Customer Information; Back-up; Return; Customer Responsibilities; CIVIX; Indemnity.
- a. *Customer Information.* All data (exclusive of the format and structure of the data) entered into the System (“Customer Information”) shall be owned by and remain the property of the Customer and shall be maintained by FBS in confidence. FBS will not disclose any Customer Information to, or permit access to any Customer Information by, any person other than: (i) employees of Customer; (ii) employees of FBS who require access to such information in order for FBS to perform under this Agreement; (iii) designated persons to whom disclosure has been authorized in writing by Customer; and (iv) such third parties as to whom FBS has been authorized or directed to disclose such information by order of a court or governmental agency of competent jurisdiction.
- b. *Backup.* FBS will perform nightly tape backups of the Customer Information stored in the System.
- c. *Return.* Customer may request in writing that FBS provide, at no additional charge, a complete copy of Customer's listing data and photos up to two (2) separate times during the term of this Agreement. The listing data will be provided in a delimited ASCII text format. Requests for data at other times or in other formats will be addressed at the time of request.
- d. *Customer Responsibilities.* Throughout the term of this Agreement, in addition to responsibilities specified elsewhere in this Agreement, Customer will be responsible for: (i) the accuracy and timeliness of all data input by Customer into the System or otherwise furnished to FBS; (ii) reviewing, sampling or otherwise auditing the data in the System, MLS books, reports and other on-line data available from FBS to verify the accuracy thereof; (iii) promptly notifying FBS of any problems or errors in the System, MLS Books, reports and on-line data and of any ways in which Customer believes the same do not conform to Customer’s expectations; (iv) the proper use of the System by Customer in accordance with FBS’s instructions; and (v) promptly notifying FBS of any problems or errors in the operation of the System and of any ways in which Customer believes the System is not performing as expected.
- e. *CIVIX.* Customer represents to FBS that it has already paid to the National Association of REALTORS (“NAR”) the \$9.06 per subscriber license/settlement fee for the patents claimed by CIVIX DDI LLC and that Customer has received a license from the NAR for all of its subscribers.
- f. *Indemnity.* Customer will, to the fullest extent permitted by law, hold FBS harmless from and indemnify FBS against any and all loss, damage, claims, liabilities or expenses, including reasonable attorneys' fees, arising out of or relating to action taken by FBS in good faith in reliance upon specific instructions, information or advice given by Customer in writing to FBS or which exceed the limitation on FBS's liability set forth in Section 15(b), below.

10. Printing and Delivery of MLS Books. If Customer is to receive MLS books from FBS, the pricing for printing and delivery of MLS books is set forth on Exhibit A. FBS and Customer shall agree on a schedule and time for production and shipping of MLS books ordered by Customer. FBS shall print and deliver the MLS Books to a courier selected by FBS with instructions to deliver the same to a single destination designated by Customer. FBS will, at its sole expense, correct any error(s) in processing or printing caused by FBS software or personnel (except errors arising from data input or submitted by Customer) and will re-run the processing or printing in which such error occurred; provided that, within three (3) days after Customer could have first discovered such error, Customer gives FBS written notice of its election of such correction and reprocessing and returns to FBS all printed material in which such error exists. Customer shall be responsible for distribution of the MLS books to the appropriate brokers and agents, and, accordingly, FBS shall not be liable for errors or delays in shipping other than those caused by its own negligence.
11. System Maintenance, Upgrades and Modifications.
- a. *Globally Distributed Modifications.* Provided Customer is current in paying all fees and charges under this Agreement, FBS agrees to provide Customer with all bug fixes, enhancements, upgrades and other modifications to the System developed by FBS and distributed free of charge by FBS to other FBS customers. Such upgrades are typically released by FBS on a quarterly basis. With respect to major feature changes, FBS will use reasonable efforts to provide such changes as preferences for Customer to choose whether or not and when to utilize the new functionality. However, Customer recognizes that certain upgrades may be required to maintain system integrity.
 - b. *Chargeable Changes.* At any time during the term of this Agreement, Customer may make written request for modifications of or enhancements to the System. Upon the submission of such written request by Customer, FBS and Customer will work together to arrive at a sufficient definition of each requested modification or enhancement to enable FBS to submit to Customer a proposal and quotation for furnishing the same. No modification or enhancement will be implemented unless the Parties have agreed in writing to a mutually acceptable definition of the modification or enhancement and the timetable and price for implementation of the same.
12. Invoicing and Payment; Taxes. FBS will issue statements (bills) to Customer for all fees and charges under this Agreement and any applicable taxes on a monthly basis or as otherwise specified herein, and Customer will pay all FBS bills in full not later than ten (10) days from date of issue. Beginning on the 25th of that month, any amounts not paid when due will accrue interest at the rate of one and one-half percent (1.5%) per month or the highest rate permitted by law, whichever is less, until fully paid. In addition, Customer will reimburse FBS for all related costs and expenses of collection, including reasonable attorneys fees. For purposes of billing, the number of subscribers shall be determined each month by the FBS billing report (which counts active and billable subscribers) from the System on approximately the 10th and 23rd and taking the higher of the two subscribership counts from those dates. Customer will also pay or reimburse FBS for all sales, use, excise and other taxes and governmental charges which FBS is at any time required to pay or collect in connection with the sale, licensing or furnishing of goods or services under this or any other Agreement between the Parties.
13. FBS Representation; FBS Ownership; Confidentiality and Use of FBS Material; Infringement Claims.
- a. *FBS Representation.* FBS represents that to the best of its knowledge it is the owner of, or has obtained an appropriate license to use, the System, including all of the computer programs and related documentation that will be utilized or made available to Customer by FBS in the performance of services for Customer hereunder.
 - b. *FBS Ownership.* Customer acknowledges and agrees that (i) FBS owns all rights, titles and interests to the System, including without limitation, all of the computer programs and related documentation and materials, all designs and specifications, all methods and devices, all modifications and

enhancements to the foregoing whether pursuant to the provisions of this Agreement or otherwise, and any derivatives of the foregoing, whether patentable or not, and whether copyrightable or not (individually and collectively, the "FBS Material"), and (ii) Customer shall neither have nor claim any right, title or interest in or to the FBS Material, except as specifically provided in and pursuant to the terms and conditions of this Agreement.

- c. *Confidentiality and Use of FBS Material.* Customer and its subscribers agree that they shall (i) not knowingly or willfully take any action which would cause or permit the FBS Material or any portion thereof to enter the public domain, or allow the FBS Material to be disclosed, copied by, distributed, published, conveyed or otherwise transferred to any other person or entity outside of Customer or its subscribers without the prior written approval of FBS, and (ii) use the FBS Material for their intended purpose and shall not use the FBS Material for any purpose other than as specifically described in this Agreement. Customer shall be responsible for compliance with the terms of this Agreement by its subscribers.
- d. *Infringement Claims.* In the event any claim or suit is brought against Customer on the basis of infringement of any patent, copyright, trademark, trade dress, or trade secret due to Customer's use of the System, subject to the limitations set forth in Section 15(b) below, FBS shall defend Customer from such claim or suit, provided (i) Customer promptly notifies FBS in writing of such claim or suit; (ii) Customer cooperates with FBS in all reasonable respects in connection with the investigation and defense of any such claim or suit; and (iii) FBS has sole control of such defense and all negotiations for its settlement or compromise. Customer shall permit FBS to, at FBS's option and expense: (1) procure for Customer the right to continue using the allegedly infringing software; or (2) replace or modify the allegedly infringing software so that it becomes non-infringing. If a court makes an infringement determination and issues a judgment against Customer for liability due to Customer's use of the System, FBS shall indemnify Customer for such judgment, subject to the limitations set forth in Section 15(b), below. If in defending against such a claim, FBS decides to enter into a license agreement or otherwise settle the claims, FBS will pay the license or settlement fee, provided that such fee is not more than twenty-five percent (25%) of the license fee FBS charges Customer under this Agreement for the allegedly infringing product. If the license or settlement fee offered by the claimant is greater than twenty-five percent (25%) of the license fee FBS charges Customer under this Agreement for the allegedly infringing product, Customer shall permit FBS to terminate this Agreement with respect to future use of the allegedly infringing software. Notwithstanding anything herein to the contrary, however, FBS shall have no obligation or liability to Customer under any provision of this paragraph to the extent that any copyright, trademark or trade secrets infringement claim is based upon use of the allegedly infringing software in a manner that exceeds the scope of use permitted under this Agreement or upon any portion of the allegedly infringing software which has been modified by or for Customer in such a way as to cause it to become infringing.

14. Term and Early Termination; Consequences of Termination; Suspension of Services.

- a. *Term, and Early Termination, and Consequences of Termination.* This Agreement shall have a term of Forty-Eight (48) months, commencing from the Installation Date, but may be terminated earlier as provided below:
- (i) this Agreement may be terminated at any time by mutual written agreement of the Parties;
 - (ii) either Party may terminate this Agreement upon written notice to the other Party if the Parties are unable to agree upon a new training and go live schedule if applicable under and pursuant to the provisions of Section 4, above;
 - (iii) either Party may terminate this Agreement upon written notice to the other Party in the event of default by the other Party if such default is not cured within thirty (30) days after written notice specifying the nature of the claimed default and the requested cure; or

- (iv) either Party may terminate this Agreement if the other Party ceases to function as a going concern, or any case, proceeding or other action is commenced seeking to have an order entered adjudicating the other Party as bankrupt or insolvent or seeking a reorganization, arrangement, adjustment, liquidation, dissolution or composition of that other Party or its debts under any law relating to bankruptcy, insolvency or relief of debtors, or seeking appointment of a receiver, trustee, custodian or similar official for such Party or all or a substantial part of its assets, and such case, proceeding or action is not dismissed within thirty (30) days of filing.
- b. *Consequences of Termination.* Upon termination or expiration of this Agreement for any reason all licenses granted shall terminate and Customer and its subscribers shall promptly cease use of the FBS Material, and shall return or certify to the destruction of all existing copies of the FBS Material. Customer and its subscribers shall be permitted not to erase those copies of the FBS Material that were made in the normal course of backing their computer systems and which are not in active use, provided that they will never be used actively. No other use of the FBS Material after termination of this Agreement is permitted.
- c. *Suspension of Services.* In the event that any FBS invoice is not paid in full by Customer within thirty (30) days following the date on which such payment is due, FBS may suspend its performance of services hereunder without terminating this Agreement, provided that FBS shall have given Customer at least fifteen (15) days advance written notice of its intention to so suspend its performance of services. FBS's suspension of its performance of services under this section shall be without prejudice to any other rights which FBS may have under this Agreement or at law or in equity, including its right to payment and its rights under the applicable possessory lien laws.

15. DISCLAIMER OF WARRANTIES; LIMITATIONS OF LIABILITY OF FBS.

- a. *Disclaimer of Warranties.* THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS PREDOMINANTLY ONE FOR SERVICES AND NOT FOR A SALE OF GOODS. IN ANY EVENT, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NONINFRINGEMENT, ARE SPECIFICALLY EXCLUDED AND DISCLAIMED, EXCLUDING ONLY THE REPRESENTATION OF FBS SET FORTH IN SECTION 13(a), ABOVE.
 - b. *Limitations of Liability of FBS.* IN NO EVENT WILL FBS BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION LOST PROFITS, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FBS'S PERFORMANCE, DELAY IN PERFORMANCE OR FAILURE OF PERFORMANCE HEREUNDER, EVEN IF CUSTOMER OR ITS SUBSCRIBERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. IN ADDITION, FBS'S AGGREGATE LIABILITY UPON CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR FBS'S PERFORMANCE, DELAY IN PERFORMANCE OR FAILURE OF PERFORMANCE HEREUNDER SHALL NOT IN ANY EVENT EXCEED THE AMOUNT PAID TO FBS BY CUSTOMER HEREUNDER, EXCLUDING ONLY CLAIMS AND LOSSES PRIMARILY THE RESULT OF THE GROSS NEGLIGENCE OR INTENTIONAL TORTS OF FBS.
16. Injunctive Relief. It is understood and agreed that any breach of any non-monetary terms of this Agreement or failure to return property lawfully belonging to FBS by Customer or its subscribers will cause FBS irreparable harm for which FBS lacks an adequate remedy at law. In the event of any such non-monetary breach or failure by Customer or its subscribers, FBS shall be entitled to injunctive relief as a non-exclusive remedy for such non-monetary breach or failure. Nothing contained in this paragraph shall act as a limitation on FBS's right to damages for any breach or failure committed by Customer or its subscribers.

17. Miscellaneous.

- a. *Force Majeure.* Neither Party will be liable to the other Party or be deemed to be in default for any failure or delay in performance hereunder due to circumstances beyond its direct control. If FBS should fail to perform any service or make any delivery hereunder as a result of any such circumstance, the time for such performance or delivery shall be extended for a period of time equal to that during which such circumstance existed, and Customer will accept such deferred performance or delivery if tendered by FBS within the extended period of time. Particular items agreed to be beyond the control of FBS include without limitation: (i) ability of the Customer to access the internet, (ii) speed of the internet, and (iii) uptime of the internet or any part thereof.
- b. *Notices.* Any notice hereunder shall be deemed given when personally delivered in writing, when dispatched via overnight courier or when mailed as described below and shall be deemed received when personally delivered in writing, twenty-four (24) hours after being sent via overnight express courier, or seventy-two (72) hours after it has been deposited in the United States Mail, registered or certified, postage pre-paid, properly addressed to the party to whom it is intended at the address set forth below or at such other address of which notice is given in accordance herewith:

If to FBS: Financial Business Systems, Inc.
3415 39th Street So.
Fargo, North Dakota 58104
Attention: Administrator

If to Customer: Regional MLS Inc.
140 Intracoastal Pointe Dr. #310
Jupiter, FL 33477
Attn: Wes Wiggins

- c. *Non-Waiver.* The failure by either Party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.
- d. *Assignment.* Neither Party may assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, except that either Party may without such consent transfer this Agreement in full to a successor pursuant to a corporate reorganization or a sale of substantially all of that Party's assets.
- e. *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
- f. *Governing Law.* This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the State of Florida.
- g. *Construction.* Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.
- h. *Mediation; Jurisdiction and Venue.* Prior to bringing any proceeding in a court (other than for injunctive relief), the Parties agree to present the dispute to a certified mediator for resolution. If the

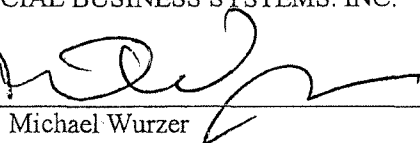
Parties cannot agree on a mediator, they agree to each submit up to two (2) mediator selections into a hat and flip a coin to see who gets to select the mediator name from the hat. The mediation may be conducted by telephone but each Party is required to have a representative with full authority to settle the matter participate in the mediation. The Parties must participate in the mediation in good faith as a condition to bringing any non-equitable judicial proceedings. If the dispute cannot be resolved after good faith mediation, then the Parties may bring suit as follows: Any action arising out of or relating to this Agreement, its performance, enforcement or breach will, if initiated by Customer, be venued in a state or federal court situated within the State of North Dakota; Customer hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for all such purposes. Any action arising out of or relating to this Agreement, its performance, enforcement or breach will, if initiated by FBS, be venued in a state or federal court situated within the State of Florida; FBS hereby irrevocably consents and submits itself to the personal jurisdiction of said courts for all such purposes. Once an action is brought, the defending party can bring counter-claims without regard to this jurisdiction requirement.

- i. *Confidentiality.* The terms and conditions of this Agreement shall be held in strict confidence by the Parties hereto, with the exception that the existence of the Agreement may be disclosed.
- j. *Entire Agreement.* This Agreement, including any Exhibits, Schedules or other attachments to which express reference is made herein, sets forth the entire agreement and understanding of the Parties regarding the subject matter hereof and supersedes all prior representations, statements, proposals, negotiations, discussions, understandings and/or agreements regarding the same subject matter. This Agreement may not be modified or amended except by a writing signed by both Parties.
- k. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Following execution, a Party may deliver this Agreement to the other Party by facsimile or by a process of scanning and delivering by electronic mail.
- l. *Survival of Terms.* Those provisions of this Agreement that, by their sense and context, are intended by the Parties to survive the completion of performance and the termination of this Agreement shall so survive.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the first date set forth above.

FINANCIAL BUSINESS SYSTEMS, INC.

By:



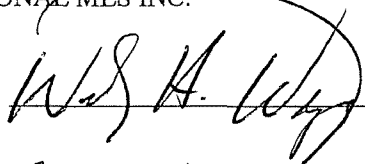
Michael Wurzer
President

Date:

11/1/2012

REGIONAL MLS INC.

By:



GENERAL MANAGER
Title

Date:

10/30/2012

Exhibit A – Pricing for a 4-Year Term

CONVERSION AND INSTALLATION FEES (One-time charges)	
Conversion and Installation Fee	Included ¹
<p>Staff and Subscriber Training²</p> <p>January/February 2012–</p> <ul style="list-style-type: none"> • Three (3) days at up to 8 hours per day of onsite admin and train-the-trainer training • Four (4) 90-minute Getting Started webinars open to subscribers (up to 1,000 attendees per session) • Three (3) 90-minute classes/day for 4 days of on-site Beginners Classes. If those fill up, we can add an extra day or more classes per day. <p>June/July 2013 –</p> <ul style="list-style-type: none"> • Four (4) 90-minute Getting Started webinars open to subscribers (up to 1,000 attendees per session) • Three (3) 90-minute classes/day for 4 days of on-site Beginners Classes. If those fill up, we can add an extra day or more classes per day. 	

Interim Term is considered the time period from the initial Flexmls go-live date through RMLS’s current MLS vendor’s contract date (i.e., July 2013).

Regular Term starts once the current MLS vendor’s contract expires through the new FBS flexmls contract.

¹ The conversion cost is estimated to be \$100,000, based on information provided to date by Customer regarding the data shares involved. This amount will not be billed to Customer provided that the number of billable subscribers remains above 7,000. For each month in which the number of billable subscribers falls below 7,000, Customer will pay FBS an additional \$2,083 or 1/48th of the conversion cost.

² FBS and Customer will work together to establish the training schedule and syllabus, with the objective of providing a 1.5 to 2 hour introductory class to all subscribers. Customer is responsible for all costs related to training facilities.

RECURRING FEES	Interim Term No charge	Regular Term \$4.25/m/m ³⁴
License Fee for flexmls Web System, including RETS 1.7 Server, Software upgrades and maintenance, and MLS Staff Technical Support, including toll-free access 8 a.m. until 9 p.m. Central Standard Time Monday thru Friday, and emergency support available 24x7x365.	No charge	\$2.00 per subscriber per month
System Hosting includes primary data center hardware, database software license, redundant bandwidth, maintenance, system backup (updated daily, live failover by alternative url).	No charge	\$2.00 per subscriber per month.
License fee for flexmls Maps, including street mapping, aerial imagery and geo-coding ⁵	No charge	\$0.25 per subscriber per month.
Public search integration. FBS will provide Customer with a framed search	No charge	Included

³ Exclusive Volume Discount. Customer may offer the services under this Agreement to Miami REALTOR Association, Greater Fort Lauderdale REALTOR Association, REALTOR Association of Martin County, South Broward Board of REALTORS, REALTORS® Association of Indian River County, Inc., and Okeechobee County Board of REALTORS®, Inc. ("Nearby MLSs") according to the following volume discount pricing, which is based on the total subscribership of Customer and the new MLSs together:

- Over 15,000 -- \$4.00 per subscriber per month
- Over 20,000 -- \$3.75 per subscriber per month
- Over 25,000 -- \$3.50 per subscriber per month
- Over 30,000 -- \$3.25 per subscriber per month.

Customer may offer the services and software to Nearby MLSs at prices to be negotiated by Customer. FBS will not offer this same volume discount pricing to any Nearby MLS, but FBS may offer services directly to Nearby MLSs at the same or higher price as FBS is offering to Customer for just its subscribership (without the volume pricing that combines the subscribership numbers). Conversion and training fees be quoted by FBS on a case-by-case basis. Customer may request that the Nearby MLS be converted into a separate database to be managed by the Nearby MLS or Customer may request that the Nearby MLS be converted into the same database as Customer.

⁴ Withdrawing MLSs. Any shareholder of Customer withdrawing from the Regional MLS will be considered a Nearby MLS and FBS agrees not to offer services to such withdrawing MLS at a price lower than the pricing quoted herein.

⁵ Additional mapping layers (such as parcel maps) may be available from your local County or other sources ("Data Source"). FBS can make these additional layers available within flexmls Mapping. To do so, there are two additional costs to Customer: (a) data *acquisition* (licensing); and (b) data *integration*. Customer is responsible for any and all cost to license or otherwise acquire the additional data from the Data Source. Integration of the data will be estimated and quoted by FBS for each layer, with a minimum fee of \$1,000 per layer per Data Source (e.g., County) for initial installation, and \$500 per layer per Data Source for subsequent updates.

engine or use of the Flexmls WordPress plugin for inclusion in a public facing web site created and hosted by Customer.

Optional Items	Interim Term	Regular Term
Toll-free end user technical support. ⁶ <i>W How</i>	\$0.75 per subscriber per month	\$1.50 per subscriber per month
License fee for flexmls Tax – County Tax Record Integration ⁷	\$0.50 per subscriber per month	\$1.00 per subscriber per month ⁸
License fee for Flexmls Showing Manager	\$.35 per subscriber per month	\$.70 per subscriber per month
Transaction fee for flexmls Document Fax-In Service	Toll-free: \$.20 per page Toll: No charge	Toll-free: \$.20 per page Toll: No charge

⁶ Customer may select Tier-1 support for the first year or part of the year and FBS and Customer will negotiate in good faith for Tier-2 support if requested by Customer.

⁷ This line item is for public records provided by FBS with data direct from the Counties. Integration of third party public record systems, such as Realist, iMap or others, into Flexmls Web is included at no additional charge.

⁸ Customer is responsible for any and all charges from the County for providing the data. Included in the per subscriber per month fee is the integration of tax records from one county. Integration of additional counties will be charged at a one-time set-up fee of \$2,500 per county, but the per subscriber per month fee will remain the same as specified above.

EXHIBIT B

Definition of Licensed Software

[] Check those that apply

flexmls web-based MLS system (the "System"). This license is granted to each member of Customer ("Licensee"), currently 11800 members. A "member" is someone who is reflected on the System roster as someone who is charged for the FBS service and license under this Agreement. Customer can also grant access to the System to authorized employees of each member, provided, however, that Customer is responsible for ensuring that only authorized members and their employees are granted access to and use of the System.

[] **flexmls PC** distributed Windows-based PC software. Each license entitles the license holder to copy the software for their own use on one office computer, a laptop computer and their home computer. An additional license will be included with each copy of the distributed software, and Customer and its members agree to agree to the terms of such license before using such software. User of the software constitutes acceptance of the terms of the included license.

Total number of licenses granted:

[] MLS-wide Site License, currently _____ members.

[] Limited Site License for _____ licenses.

For FBS Personnel Only

Estimated Date of Installation _____

Additional License Terms

Copy Restrictions and Permitted Use. FBS is the copyright owner of the Licensed Software. The internal aspects and components of the Licensed Software are trade secrets of FBS. LICENSEE will not modify, adapt, translate, reverse engineer, decompile, disassemble, or create derivative works based upon the Licensed Software. LICENSEE will make reasonable efforts to prevent any unauthorized copying of the Licensed Software or disclosure or use of FBS's trade secret information, and LICENSEE will advise its agents and employees who are permitted access to the Licensed Software of the restrictions upon copying, reverse engineering, disclosure and use contained in this Software License. LICENSEE will be liable for any unauthorized use, copying, reverse engineering and/or disclosure by its agents or employees.

LICENSEE assumes all responsibility for the selection of the Licensed Software to achieve LICENSEE's intended results. FBS does not warrant that the Licensed Software will meet LICENSEE's requirements or that the operation of the programs will be uninterrupted or error free, except as specifically provided in the Agreement.

FBS WILL NOT BE LIABLE FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION, OR ANY OTHER DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE LICENSED SOFTWARE, EVEN IF FBS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

EXHIBIT C

FBS agrees to perform the following tasks or System modifications in connection with the installation of the System for Customer:

- Integrate one or more tax systems selected by Customer or one or more of Customer's individual shareholder Associations and, if requested, display or default the selected system only to members of that Association. Integration may include:
 - Tax search link on the menu;
 - Detail report on listing search results;
 - Auto-population of listings from tax records (FBS recommends only choosing one vendor for auto-population).
- At Customer's direction, FBS will integrate data feeds from each Association's membership management system, such as RAMCO, Rapattoni, and MMSI.

Exhibit 4

Law Offices of

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August 6, 2015

Gary J. Nagle, Esq.
14255 U.S. Highway One, Suite 201
Juno Beach, Fl. 33408
gary@naglelawfl.com

Re: Realtors® Association of the Palm Beaches, Inc. ("RAPB")/Jupiter-
Tequesta-Hobe Sound Association of Realtors®, Inc. ("JTHS")
Mediation Settlement Agreement

Dear Gary:

Recently the President of JTHS notified the President of RAPB that the Board of Directors of JTHS has voted to approve a merger with the Miami Association of Realtors ("MAR"). It is my understanding that there will be a membership meeting in the immediate future to vote on the merger plan.

As you are aware, the Mediation Settlement Agreement executed June 11, 2013 was an exclusive agreement between the three associations who were previously shareholders of Regional Multiple Listing Service, Inc. ("RMLS"). The Mediation Settlement Agreement provided for data sharing as was "currently in use" at the time of executing the Mediation Settlement Agreement through the Flex Termination Date for the sole benefit of the members of those three associations. Further, Paragraph 22 of the Agreement specifically prohibited any information concerning the settlement or the terms of the Mediation Settlement Agreement with anyone other than the parties, their immediate families, their respective attorneys, directors, accountants, government officials and self-regulatory bodies. As such, JTHS is prohibited from providing any information concerning the settlement or the terms of the Mediation Settlement Agreement to MAR or anyone other than those parties specifically referenced in Paragraph 22 of the Mediation Settlement Agreement.

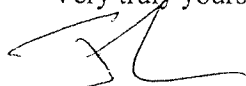
Based upon the foregoing, RAPB is providing you with written notice that upon the effective date of merger or other consolidation of JTHS and MAR, the Mediation Settlement Agreement shall be null and void and of no further effect and the terms and provisions, especially with regard to data sharing, shall immediately terminate.

Since JTHS has scheduled a membership meeting for the approval or rejection of the merger plan, I would remind JTHS of its fiduciary duty to notify all of the members

Gary J. Nagle, Esq.
August 6, 2015
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of JTHS that a vote of the membership approving the merger of JTHS and MAR will void the terms and provisions of the Mediation Settlement Agreement to the effect that all data sharing will immediately cease upon the effective date of the merger with MAR, but a vote rejecting the merger will continue the terms and provisions of the Mediation Settlement Agreement in effect until July 2017.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John Edgar Sherrard', with a stylized flourish at the end.

John Edgar Sherrard

JES/paf
xc: Client

Exhibit 5

associations. It also included notice to cease all misinformation being conveyed. It appears it MAY have helped only on this last point.

Our attorneys are communicating now to determine recommended action.

From: Realtors Association of the Palm Beaches [<mailto:communications@rapb.com>]

Sent: Monday, August 10, 2015 5:16 PM

To: Nancy Cardone

Subject: Congratulations, you may soon be a Miami member!

[View Web Version](#)



Well not yet....YOU Have the Chance to VOTE



Show Up on Friday, August 14th to VOTE on the merger between the Jupiter-Tequesta-Hobe Sound Association of REALTORS® (JTHS) and the Miami Association of REALTORS®. ***IT'S NOT TOO LATE!***

Know the Facts...

- The Realtors® Association of the Palm Beaches (RAPB) ***wants to merge with you!***
- We offer competitive pricing and first-rate service
- We can work with you to provide financial strength and stability
- We are local and we know your needs - plus we think **you** can bring a lot of new things to **us!**

- A merger with Miami means a loss of identity as an Association. The Jupiter-Tequesta-Hobe Sound Association will become the Jupiter-Tequesta-Hobe Sound **Council** of the "**Miami Association of REALTORS®**"
- If the merger goes through, Miami members will now have complete access to your MLS data - Are you willing to give your data away?

**JTHS Keep Real Estate Local:
Show up and VOTE and keep Miami out of Jupiter!**

Friday, August 14, 2015
Embassy Suites, 4350 PGA Blvd., Palm Beach Gardens, 33410
9:00am - 11:00am

A little bit about us...

- To gather your feedback, we hold quarterly Broker Town Halls, have active Committees (12) you can join, and visit your offices regularly.
We value your opinion!
- We have an award winning Global Business Alliance PLUS an active Young Professionals Network and Commercial Alliance
- We care about our community and organize regular volunteer efforts to give back and enhance the image of REALTORS®

Show Up on Friday, August 14th to VOTE...IT'S NOT TOO LATE!

Four Convenient Member & MLS Centers to Serve You:

West Palm Beach (Corporate) • Boca Raton • Palm Beach Gardens • Port St. Lucie • Directions
RAPB • 561.585.4544 • FAX 561.585.4348 • membership@rapb.com • www.rapb.com
Beaches/MLS • 561.727.2577 • mls@rapb.com • www.rapb.com/mls

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