UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

RE/MAX, LLC, a Delaware limited liability company, RE/MAX INTEGRATED REGIONS, LLC, a Delaware limited liability company, Plaintiffs, v. JAMES E. DULIN II; THE HAMILTON GROUP, INC., an Indiana corporation, Defendants.	)	Cause No. 1:21-cv-02321-TWP-TAB

DEFENDANTS' AMENDED ANSWER AND AFFIRMATIVE DEFENSES TO SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL AND COUNTERCLAIMS

Defendants, James E. Dulin II ("Dulin") and The Hamilton Group, Inc. ("Hamilton Group," and, together with Dulin, "Defendants"), by counsel, submit the following Answer and Affirmative Defenses in response to the Second Amended Complaint filed by Plaintiffs RE/MAX, LLC ("RML") and RE/MAX Integrated Regions, LLC ("RIR").

NATURE OF THE ACTION

1. Plaintiffs and Defendants were and are parties to franchise agreements that require Defendants to operate and promote the business of three RE/MAX® franchise real estate offices in Indiana, each for a specified Term (the "Franchise Agreements"). During the Terms, Defendants are prohibited from competing against

Plaintiffs, or engaging in any conduct that is injurious to Plaintiffs, the RE/MAX brand, or other RE/MAX offices. The Franchise Agreements also limit Defendants' use of the RE/MAX Marks (defined below).

ANSWER: Defendants admit that Defendants and Plaintiffs were parties to some agreements, the terms of which speak for themselves. Defendants deny the allegations remaining in Paragraph 1.

2. In clear violation of these continuing obligations, Dulin actively competed against his RE/MAX franchises and all Indiana RE/MAX franchisees by aligning with and promoting Plaintiffs' competitor, eXp Realty, LLC ("eXp") and improperly steering his RE/MAX sales associates to eXp—effectively destroying the very franchise businesses he was required to promote—and, thereafter, abandoning his franchises entirely. Defendants also unfairly competed with Plaintiffs by enabling eXp agents to work out of at least two of their RE/MAX franchise locations, which had signage prominently displaying the RE/MAX Marks, thereby creating the likelihood of consumer confusion as to eXp's affiliation or connection with RE/MAX in the Indianapolis market. Plaintiffs bring this suit against Defendants to enforce Plaintiffs' rights under the Franchise Agreements and federal and state law, to recover economic damages flowing from Defendants' misconduct, and to obtain declaratory relief clarifying and enforcing the parties' rights and obligations under the Franchise Agreements.

ANSWER: Deny.

PARTIES

3. RML is a Delaware limited liability company whose principal place of business is located at 5075 S. Syracuse Street, Denver, CO 80237, and whose sole Member is RMCO, LLC, a Delaware limited liability company whose principal place of business is 5075 S. Syracuse Street, Denver, CO 80237. RMCO, LLC's Members are RE/MAX Holdings, Inc., a Delaware corporation, and RIHI, Inc., a Delaware corporation. RE/MAX Holdings, Inc. is the majority owner and sole manager of RMCO, LLC; its principal address is 5075 S. Syracuse Street, Denver, CO 80237. RE/MAX Holdings, Inc. is a public company with shares listed on The New York Stock Exchange under the symbol "RMAX." RIHI, Inc. is the minority owner of RMCO, LLC; its principal address is 8822 S. Ridgeline Boulevard, Suite 250, Highlands Ranch, CO 80129. RIHI, Inc. is majority owned and controlled by David L. Liniger and Gail A. Liniger, who are residents of Colorado.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 3, and therefore deny the same.

4. RIR is a Delaware limited liability company whose principal place of business is located at 5075 S. Syracuse St., Denver, CO 80237, and whose sole Member is RML, whose corporate ownership and citizenship is discussed in Paragraph 3, above.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 4, and therefore deny the same.

5. Upon information and belief, Dulin is an individual who resides in Indianapolis, Indiana.

ANSWER: Admit.

6. Upon information and belief, The Hamilton Group, Inc. is an Indiana corporation whose principal place of business is located at 200 S. Rangeline Road, Suite 129, Carmel, IN, 46032.

ANSWER: Admit.

JURISDICTION AND VENUE

7. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. 1121(a) and 28 U.S.C. §§ 1331 and 1338 in that this civil action arises under the Trademark Laws of the United States, Lanham Act 15 U.S.C. § 1051 *et seq.* The Court has supplemental jurisdiction over Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that this civil action is between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

ANSWER: In response to paragraph 7, Defendants admit that this Court has subject-matter jurisdiction. Defendants deny any implication that Plaintiffs are entitled to any relief under any of their claims

8. This Court has personal jurisdiction over Defendants because they

reside in Indiana. Venue is proper in this District, including pursuant to 28 U.S.C. § 1391(b), because Defendants reside in this District and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Moreover, Defendants have submitted to personal jurisdiction and have consented to venue in this Court under the Franchise Agreements.

ANSWER: In response to paragraph 8, Defendants admit that this Court has personal jurisdiction. Defendants deny any implication that Plaintiffs are entitled to any relief under any of their claims

FACTUAL ALLEGATIONS

I. RML'S FRANCHISE NETWORK AND THE RE/MAX MARKS

9. Operating throughout the United States, the RE/MAX franchise network (the "RE/MAX Network") is a real estate system of independently owned and operated franchised offices and their affiliated independent contractor/sales associates who are authorized to use the RE/MAX trademarks in connection with providing real estate brokerage services.

ANSWER: Admit.

10. Those affiliated with the RE/MAX Network have provided real estate brokerage services in interstate commerce in the United States using the RE/MAX and REMAX word marks, including a stylized form distinguished by "RE/MAX" in all capital letters in red or blue, accented with a contrasting red or blue diagonal slash, examples of which are set forth below:

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph10 regarding what others may have done, and therefore deny the same. Defendants admit that Dulin has provided real estate brokerage services in Indiana using the word marks described in Paragraph 10.

11. Those affiliated with the RE/MAX Network have also provided real estate brokerage services in interstate commerce in the United States using a service mark consisting of a hot air balloon design, examples of which are set forth below:

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph11 regarding what others may have done, and therefore deny the same. Defendants admit that Dulin has provided real estate brokerage services in Indiana using the marks described in Paragraph 11.

12. Those affiliated with the RE/MAX Network have also provided real estate brokerage services in interstate commerce in the United States using the RE/MAX "for sale" sign design, examples of which are set forth below:

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph12 regarding what others may have done, and therefore deny the same. Defendants admit that Dulin has provided real estate brokerage services in Indiana using the signs similar to those described in Paragraph 12.

13. RML owns numerous U.S. Trademark Registrations for a family of marks that includes those set forth above, including, but not limited to, U.S. Trademark Registration Nos. 1,139,014; 1,702,048; 1,900,865; 1,902,982; 2,106,387; 2,119,607; 2,403,626; 2,850,985; 3,296,461; 3,338,086; 4,716,534; 4,986,346, 5,524,499, 5,504,643, 5,524,502, 5,504,642, 5,524,493, 5,411,423, 5,453,086, and 5,453,087. Copies of the registration certificates for these marks are attached as **Exhibit A**.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 13, and therefore deny the same.

14. U.S. Trademark Registrations 1,139,014; 1,173,586; 1,691,854; 1,702,048;1,720,592; 1,900,865; 1,902,982; 2,106,387; 2,119,607; 2,403,626; 2,850,985; 3,296,461;,3,338,086 have achieved incontestability status under 15 U.S.C. § 1065.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 14, and therefore deny the same.

15. All other U.S. Trademark Registrations listed above are valid and subsisting and therefore constitute prima facie evidence of the validity of the marks set forth in these registrations and RML's exclusive right to use these marks in connection with the services set forth in these registrations.

ANSWER: Defendants lack knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 15, and therefore deny the same.

16. The federal registration and common law rights of RML in the marks described above are collectively referred to herein as the "RE/MAX Marks."

ANSWER: Defendants deny that rhetorical statement contained in Paragraph 16 contains any allegations that require a response.

II. THE FRANCHISE AGREEMENTS

17. RIR was founded in July 2021, and, upon RML's July 21, 2021 acquisition of RE/MAX of Indiana Limited Partnership d/b/a RE/MAX INTEGRA, Midwest ("INTEGRA"), RIR became the regional subfranchisor of the RE/MAX system in Indiana.

ANSWER: Defendants lack sufficient knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 17, and therefore denies.

18. RIR and Defendants were parties to four franchise agreements granting Defendants the right to own and requiring them to operate RE/MAX franchised real estate offices in West Clay, Carmel, Lafayette, and Lebanon, Indiana, respectively (the "Franchise Agreements"), each for its specified Term.[1] The

[1] INTEGRA, an Indiana limited partnership, was originally party to the Franchise Agreements. However, on July 21, 2021, RIR acquired INTEGRA and RIR succeeded to INTEGRA's rightsunder the Franchise Agreements and related Guarantees. The Franchise Agreements expressly authorize such a transfer. (§ 12.A.)

offices were approved to operate under the d/b/a RE/MAX Ability Plus. The Terms of the Franchise Agreements for the West Clay and Carmel locations expired on August 27, 2021 and September 25, 2021, respectively. The Terms of the Franchise Agreements for the Lafayette and Lebanon locations continue for several more years and expire on August 31, 2023 and November 19, 2024, respectively.

ANSWER: Defendants admit that RIR and Defendants were parties to franchise agreements granting the Defendants the right to own and requiring them to operate RE/MAX franchised real estate offices in West Clay, Carmel, and Lafayette, Indiana and that the West Clay, Carmel, and Lafayett offices were approved to operate under the d/b/a RE/MAX Ability Plus. Defendants admit that the Terms of the Franchise Agreements for the West Clay and Carmel locations expired on August 27, 2021 and September 25, 2021, respectively. Defendants deny the remaining allegations in Paragraph 18.

19. Dulin executed a Guaranty and Assumption of Obligations for each of the Franchise Agreements, whereby he personally and unconditionally guaranteed to RIR and RML the full performance of each and every undertaking set forth in the Agreements (the "Guarantees").

ANSWER: Admit.

20. RML is a third-party beneficiary of every section of the Franchise Agreements that involves the use of the RE/MAX Marks and/or the RE/MAX

System. (§ 4.B(11).)

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation or implication related to the Franchise Agreements contained in Paragraph 20.

21. The Franchise Agreements contain various provisions intended to protect the RE/MAX Network, including, without limitation, the RE/MAX Marks.

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation or implication related to the Franchise Agreements contained in Paragraph 21.

22. Throughout the respective Terms of the Franchise Agreements, Defendants must operate their franchise and promote and enhance the business of their franchised offices and refrain from any business practice that is injurious to Plaintiffs or the goodwill associated with the RE/MAX brand:

a. "You specifically agree to operate the Office in accordance with the provisions of this Agreement, perform the obligations of this Agreement, and continuously exert your best efforts to promote and enhance the business of the Office for the Term " (§ 2.B.)

b. "You further agree that you will operate the Office continuously during the Term, and that you will not voluntarily abandon or fail to actively

operate the Office for a period in excess of five (5) consecutive business days ....." (§ 3.)

c. "You acknowledge and agree that the development and operation of the Office in accordance with the System, this Agreement and the Operations Materials is essential to preserve the reputation and high standards of quality and service of RE/MAX offices and the goodwill associated with the RE/MAX Marks." (§ 8.B.)

d. "You agree to refrain, and to ensure that your Sales Associates and any other persons affiliated with your Office refrain, from any business or advertising practice which may be injurious to our or RE/MAX, LLC's business and the goodwill associated with the RE/MAX Marks and other RE/MAX offices." (§ 8.C.)

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation or implication related to the Franchise Agreements contained in Paragraph 22.

23. To protect the RE/MAX Network, including, without limitation, the RE/MAX Marks, the Franchise Agreements prohibit Defendants from competing with Plaintiffs during the respective Terms:

a. "The Office may be used only to operate a RE/MAX real estate service

business, and may not be used to conduct another business or to generate revenue from any other activities " (§ 2.A.)

b. "You further agree not to conduct, or permit anyone affiliated with the Office to conduct, any business or activity at the Premises other than the real estate service business authorized by this Agreement." (§ 2.C.)

c. "[Y]ou agree that without our prior written consent, which we have the unfettered right to withhold, none of you, or if you are an entity, your Owners, or your Sales Associates (including, but not limited to, your manager or designated or managing broker of record), or the immediate family members (as defined below), of any of you or them will, during the Term, directly or indirectly, as an officer, director, shareholder, partner, manager, employee, agent, consultant, independent contractor or otherwise, operate, manage, own, have an interest in or become affiliated with in any other way (1) any non RE/MAX real estate service business; or (2) any other business or enterprise offering products or services that directly or indirectly compete with the products and services offered by RE/MAX offices, RE/MAX Regional or RE/MAX, LLC, or any of our or RE/MAX, LLC's affiliates." (*Id.*, § 5.F.)

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation or implication related to the Franchise Agreements contained in Paragraph 23.

24. The Franchise Agreements also grant Defendants a limited, non-exclusive license to use the RE/MAX Marks during the respective Terms. Defendants' license is limited to the use of RE/MAX Marks "only in connection with the operation of the Office and the Permitted Real Estate Service Activities specified" in the Franchise Agreements (§ 4.A) and in conformity with detailed requirements and limitations set forth in the Agreements and in the RE/MAX Brand Identity manual (§ 4.B). Defendants also agreed not to use "the RE/MAX Marks (a) in any manner that may mislead or deceive consumers in any way...; or (b) other than for the promotion of the Permitted Real Estate Service Activities provided by [their] Office[s]." (§ 4.B(1).) Consistent with the Franchise Agreements, the RE/MAX Brand Identity manual states the following:

> RE/MAX Affiliates are permitted to use the various RE/MAX marks only in connection with promoting RE/MAX real estate services authorized under the franchise agreement. Any other business or activity must be operated as a separate company at a different address, website, telephone number, etc., and under a name that contains no reference or similarity to the RE/MAX marks.

ANSWER: The Franchise Agreements speak for themselves. Defendants deny

any allegation or implication related to the Franchise Agreements contained in Paragraph 24.

25. In the event of any breach by Defendants, the Franchise Agreements require Defendants to reimburse RIR for the attorney fees and costs RIR incurs as a result thereof. (§ 15.H.)

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation or implication related to the Franchise Agreements contained in Paragraph 25.

26. The Franchise Agreements are governed by Indiana law. (§ 15.K.)

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation or implication related to the Franchise Agreements contained in Paragraph 26.

27. In exchange for the substantial benefits of being affiliated with the RE/MAX Network, Defendants are required to pay RIR the following fees and dues: a Monthly Management Fee, a Promotion Fee, a Transaction Fee, and Annual Dues. (§ 6.) These payments are a function of the number of sales associates whom Defendants contract with to perform real estate services at their franchises. In other words, under the Franchise Agreements, the more sales associates working for Defendants, the more Defendants pay RIR in the above fees and dues. Defendants

are also required to pay RML a Regional Development Fund Fee and a Hot Air Balloon Fund Fee for each franchised office that they operate, regardless of sales associate count.

ANSWER: The Franchise Agreements speak for themselves. Defendants admit that the Defendants had to pay RIR a Monthly Management Fee, a Promotion Fee, a Transaction Fee, Annual Dues, a Regional Development Fund Fee, and a Hot Air Balloon Fund Fee. Defendants deny the allegations remaining in Paragraph 27.

III. DEFENDANTS VIOLATED THE FRANCHISE AGREEMENTS AND UNFAIRLY COMPETED AGAINST PLAINTIFFS

28. Dulin has been a franchisee within the RE/MAX Network for a decade. Throughout this time, Plaintiffs have supported Dulin through various business and personal challenges. INTEGRA assisted the Defendants in the restructuring of their RE/MAX business, including right-sizing their office operations and permitting the early termination of four RE/MAX franchise agreements, with the requirement that the then-remaining terms of those terminated franchise agreements be added to the terms of the Carmel and Lafayette franchise agreements. In the course of this and prior restructuring agreements, INTEGRA waived over $450,000 in past due Management Fees, Promotion Fees, and Transaction Fees. In addition, when Dulin's top-producing sales associate threatened to leave because Dulin failed to pay her a six-figure balance of owed commissions that had accrued over an extended period, INTEGRA intervened and

brokered a resolution.

ANSWER: Deny.

29. Despite Plaintiffs' consistent efforts to help him, and even though the Lafayette and Lebanon Franchise Agreements extend for several more years, Dulin engaged in a course of conduct that, by his own design, undermined his franchises and harmed the RE/MAX Marks and the associated goodwill, as well as the RE/MAX Network. Having succeeded in hollowing out his franchises, and in further breach of the Franchise Agreements, Dulin has abandoned his Lafayette and Lebanon franchise locations altogether.

ANSWER: Deny.

30. INTEGRA's records reflect that between December 15, 2020 and March 2, 2021, fourteen of Defendants' sales associates left Defendants' Carmel and Lebanon locations and joined eXp.

ANSWER: Defendants lack sufficient knowledge or information sufficient to form a belief as to what Integra's records reflect, and therefore deny the allegations contained in Paragraph 30.

31. Shortly thereafter, Dulin asked INTEGRA for consent to close his office in Lebanon and move his sales associates to the Carmel office. INTEGRA responded that it would agree to close the Lebanon office so long as Dulin agreed that the remaining Term of the Lebanon Franchise Agreement be added to the

Carmel Franchise Agreement, as had been required in the earlier restructuring. RML prepared an agreement to that effect, but Dulin rejected RML's terms. Ultimately, the discussions between Dulin and INTEGRA did not result in an agreement signed by both parties, as required to modify the Franchise Agreements. As such, the Lebanon Franchise Agreement remains effective, and Defendants' obligations thereunder extend to November 2024. Notwithstanding those obligations, Defendants have not been operating their Lebanon franchise location since approximately March 10, 2021, which is a breach of the Lebanon Franchise Agreement.

ANSWER: Defendants admit that they asked for consent to close the Lebanon office. Defendants deny all allegations remaining in Paragraph 31.

32. On March 3 and 11, and on April 21, 2021, Dulin and members of his staff met with INTEGRA Business Growth team representatives. During those meetings, with respect to the renewal of the Carmel Franchise Agreement, Dulin said he was "exploring his options." Dulin requested additional meetings with INTEGRA to be "resold" on RE/MAX; those meetings with Dulin and his management team were conducted on May 12 and June 2, 2021.

ANSWER: Admit.

33. On information and belief, in late April, Dulin and members of his management team at RE/MAX Ability Plus held their annual company retreat. In

years past, the retreat was held locally in the Indianapolis area. However, this year, the retreat was held in Arizona. On information and belief, the following individuals from Dulin's management team attended the retreat: Tamara Dulin (Dulin's wife), Kevin Elson, Tammy Kelly, Denise Wilson, Jason Hofman, Jim Morgan, and Brooke Stines-Broady.

ANSWER: Deny.

34. During the retreat, Dulin and his team attended a meeting at the home of Chuck and Angela Fazio, who are eXp agents. On information and belief, additional eXp agents also attended the meeting.

ANSWER: Defendants admit that Mr. Dulin attended a meeting at the home of Chuck and Angela Fazio. Defendants deny all allegations remaining in Paragraph 34.

35. Agent recruitment is central to eXp's business model. To that end, eXp automatically enrolls its agents in a Revenue Share Plan that compensates them a percentage of commissions earned by new agents they recruit to eXp who name them as a "Sponsor," a percentage of commissions earned by agents whom the new agents recruit to eXp, and so forth, down seven tiers of succession. In the specific context of Chuck and Angelo Fazio, if Dulin joined eXp as an agent and named one of them as his eXp Sponsor, the Fazios would be compensated under eXp's Revenue Share Plan a percentage of commissions earned by Dulin. If Dulin brought all or part of his team

of RE/MAX Ability Plus sales associates with him to eXp and they named Dulin as a Sponsor, Dulin's sales associates would be in Tier 2 of the Fazios' Revenue Share Plan line, and they would be in Tier 1 of Dulin's Revenue Share Plan line.

ANSWER: Deny.

36. On information and belief, during the Fazio meeting in Arizona, Dulin asked his RE/MAX Ability Plus team to commit to joining eXp.

ANSWER: Deny.

37. Sometime in the spring of 2021, Dulin contacted eXp. According to the sworn testimony of Dave Conord, eXp's head of U.S. Growth, Dulin told eXp that he was interested in joining eXp with his team at RE/MAX Ability Plus. Mr. Conord further testified that eXp told Dulin that he could not join eXp because he remained under contract with Plaintiffs for several additional years.

ANSWER: Defendants admit that sometime in the spring of 2021. Mr. Dulin contacted eXp. Defendants lack sufficient knowledge or information sufficient to form a belief as to what Dave Conord testified, and therefore deny the allegations remaining in Paragraph 37.

38. Dulin was in a bind (of his own making). He had already begun encouraging his RE/MAX Ability Plus sales associates to convert to eXp. But if he could not join eXp, his sales associates could not name him as their eXp Sponsor,

and he would not receive Revenue Share Plan compensation for converting them.

ANSWER: Deny.

39. Dulin then tried to do indirectly what he could not do directly. On information and belief, his wife, Tamara, attempted to join eXp. On information and belief, the plan was for her to join eXp first so Dulin's sales associates could name her as their eXp Sponsor and she (and, by extension, Mr. Dulin) could receive eXp Revenue Share plan compensation. But again, eXp refused Ms. Dulin's request because of Mr. Dulin's franchise agreements with Plaintiffs.

ANSWER: Deny.

40. With those two options foreclosed, Dulin took a different tack. On information and belief, he entered into an agreement with one or more of Chuck Fazio, Angela Fazio, and/or Brooke Stines-Broady, an operations manager at his RE/MAX Ability Plus office since 2015. Under this agreement, Brooke Stines-Broady would leave RE/MAX Ability Plus and join eXp, naming either Chuck or Angela Fazio as her eXp Sponsor. Then, Dulin's sales associates at RE/MAX Ability Plus would join eXp and name Stines-Broady as their eXp Sponsor. As a result, the Fazios would get Revenue Share Plan compensation for Dulin's RE/MAX Ability Plus team through Stines-Broady, and Stines-Broady would also get Revenue Share Plan compensation for Dulin's RE/MAX Ability Plus team. But unlike the Fazios, Stines-Broady would not keep the Revenue Share Plan compensation she received; instead,

she would transfer that compensation to Dulin, either directly or indirectly, whether through one of Dulin's family members or friends or a separate entity he owns and controls, or otherwise.

ANSWER: Deny.

41. On information and belief, Brooke Stines-Broady left RE/MAX Ability Plus as of July 31, 2021 and joined eXp.

ANSWER: Admit.

42. On July 30, 2021, Dulin held a meeting at his Lafayette office and informed his sales associates that he would not be renewing his Carmel Franchise Agreement when the Carmel Franchise Agreement expired in September 2021. He also informed his Lafayette sales associates that he planned to move his broker's license to Lafayette when Carmel expires, and that he planned to join eXp when the Lafayette Franchise Agreement expires in 2023.

ANSWER: Defendants admit that on July 30, 2021, Dulin held a meeting at his Lafayette office and informed his sales associates that he would not be renewing his Carmel Franchise Agreement when the Carmel Franchise Agreement expired in September 2021. Defendants deny the allegations remaining in Paragraph 42.

43. On August 2, 2021, Dulin held a meeting at the Carmel Design

Center, where his RE/MAX Carmel office is located. A "RE/MAX Ability Plus" sign is prominently displayed outside of the building.

ANSWER: Defendants admit that on August 2, 2021, Dulin held a meeting at the Carmel Design Center, where his RE/MAX Carmel office was located. Defendants deny the allegations remaining in Paragraph 43.

44. The August 2, 2021 meeting was attended by sales associates from all of Dulin's RE/MAX Ability Plus locations, along with Tamara Dulin, Brooke Stines-Broady, and Chuck and Angela Fazio. At the meeting, Mr. Dulin reiterated his intention not to renew his Carmel Franchise Agreement in September, and to operate his RE/MAX franchise in Lafayette until the Lafayette Franchise Agreement expires in 2023, then join eXp. Dulin's plan ignored Defendants' obligations under the Lebanon Franchise Agreement, which runs until November 2024.

ANSWER: Defendants admit that the August 2, 2021 meeting was attended by sales associates from all of Dulin's RE/MAX Ability Plus locations, along with Tamara Dulin, Brooke Stines-Broady, and Chuck and Angela Fazio. Defendants deny the allegations remaining in Paragraph 44.

45. Dulin is also obligated to promote the business of his Lafayette and Lebanon offices throughout their respective Terms. This obligation includes recruiting and retaining sales associates, who are the primary source of revenue for

those offices. But at the August 2 meeting, Dulin did not encourage his sales associates to stay with him at his RE/MAX offices in Lafayette or Lebanon. Instead, he disparaged RE/MAX and encouraged them to join eXp.

ANSWER: Deny.

46. Upon concluding his remarks, Dulin, his wife, and Stines-Broady left the room (in a futile attempt to create plausible deniability). Then, Chuck and Angela Fazio gave a presentation about eXp to the sales associates. Yard signs and business cards were made for the sales associates affiliating them with the DOMI Agency, which is brokered by eXp. Dulin's sales associates also received a spreadsheet comparing the fees and expenses they are required to pay with RE/MAX Ability Plus compared to the fees and expenses they would be required to pay if they joined eXp. On information and belief, Dulin facilitated the Fazios' eXp presentation, in violation of his non-compete and office promotion obligations under the Franchise Agreements.

ANSWER: Deny.

47. In addition, on information and belief, the RE/MAX Ability Plus form independent contractor agreement, which all sales associates sign, requires a sales associate who leaves the franchise with less than 30 days' notice to pay an additional month of fees to Defendants. Dulin waived those fees for sales associates who left his franchises and joined eXp, but charged those fees to sales associates

who left his franchises and joined another RE/MAX office. On information and belief, Dulin also allowed RE/MAX Ability Plus associates who joined eXp to take their active real estate listings with them, but he retained active listings belonging to those sales associates who joined another RE/MAX office. In effect, Dulin actively incentivized his sales associates to abandon the RE/MAX Network and join eXp, in violation of his non-compete and office promotion obligations under the Franchise Agreements.

ANSWER: Deny.

48. As a result of Dulin's conduct, approximately 19 RE/MAX Ability Plus sales associates joined eXp on the day of his August 2 meeting, and another 32 joined eXp in the weeks following. These 51 former RE/MAX Ability Plus sales associates represent a loss of more than 60% of Dulin's sales associate head count across his franchise locations. Moreover, since Dulin's August 2 meeting, an additional 23 sales associates have left for other companies. The cumulative departure of 74 sales associates from Defendants' franchises in a month-and-a- half represented a loss of more than 90% of RE/MAX Ability Plus sales associates. No sales associates remain affiliated with the now-expired Carmel office. Only two sales associates remain affiliated in Lafayette – one of which is Dulin himself. Dulin has succeeded in hollowing

out his franchises, in violation of his non-compete and office promotion obligations under the Franchise Agreements.

ANSWER: Deny.

49. On information and belief, a number of RE/MAX Ability Plus sales associates whom Dulin assisted in converting to eXp conducted real estate services business out of Dulin's RE/MAX Carmel and Lafayette office locations with Dulin's knowledge and encouragement. For example, Brooke Stines-Broady sent an email attempting to recruit agents to eXp, with the address of Dulin's RE/MAX Carmel location identified as eXp's office address. Moreover, Tyce Carlson was one of the sales associates who transferred from RE/MAX Ability Plus in Carmel to eXp on August 2, 2021. Mr. Carlson's eXp business card listed Dulin's RE/MAX Carmel location as his (Carlson's) address. In early August, several days after Dulin's meeting, individuals were seen leaving Dulin's Carmel office carrying yard signs—the signs were for eXp, not RE/MAX. And a RE/MAX franchisee who visited Dulin's Lafayette office location in late August personally observed eXp agents working there. In effect, Dulin facilitated the conduct of real estate business on eXp's behalf out of his RE/MAX Ability Plus offices, which is a clear violation of Dulin's non-compete and office promotion obligations under the Franchise Agreements.

ANSWER: Deny.

50. Further, Dulin's Carmel and Lafayette office locations each had signs prominently displaying the RE/MAX Marks. With eXp agents working out of these locations, consumers were likely led to the false and/or misleading

impression that eXp is either endorsed by or affiliated with RE/MAX, or that RE/MAX and eXp are related parties when they are not. This false and/or misleading impression caused substantial harm to Plaintiffs.

ANSWER: Deny.

51. This false and/or misleading impression is also exacerbated by the fact that certain former RE/MAX Ability Plus sales associates who joined eXp continue to use the RE/MAX Marks on social media websites such as LinkedIn, Facebook, Twitter, Yelp, and Instagram; and on real estate websites such as Zillow, realtor.com, houzz.com, and Redfin. Pursuant to the Franchise Agreements, Defendants are responsible for, and agree to supervise, their sales associates in order to ensure the proper use of the RE/MAX Marks, including the requirement that the RE/MAX Marks only be used in connection with the operation of Defendants' RE/MAX offices, and the prohibition on using the RE/MAX Marks in any manner that may mislead or deceive consumers in any way. (§§ 4.A, 4.A(4), 4.B(10).) Defendants' failure to ensure their departed sales associates de-identify from RE/MAX Ability Plus and immediately stop using the RE/MAX Marks is causing additional harm to Plaintiffs.

ANSWER: Deny.

52. On information and belief, since the Term of his Franchise Agreement for the Carmel location expired, Dulin has been operating that location as an eXp

"clubhouse." One of his former RE/MAX Ability Plus sales associates, Andrew Neal, who joined eXp in August, recruited other agents to join eXp on Instagram using Dulin's Carmel office location as a primary selling point. In effect, Dulin is maintaining a brick and mortar presence in Carmel that will be used to conduct real estate services business on eXp's behalf in competition with Plaintiffs, in violation of his obligations under the Lafayette and Lebanon Franchise Agreements.

ANSWER: Deny.

53. Defendants have also stopped paying RIR the fees they owe under their Franchise Agreements. Pursuant to Section 6 of the Agreements, Defendants are required to pay all fees for the previous month no later than the fifth day of the subsequent month. In violation of that obligation, Defendants failed to report the gross monthly real estate commissions generated by their offices for the months of July and August, which prevented Plaintiffs from calculating the 1% Transaction Fee Defendants must pay pursuant to Section 6.D of the Franchise Agreements (in addition to preventing their RE/MAX Ability Plus sales associates from receiving credit toward RML's national and regional annual performance designations and awards). Even when Defendants submitted late reports of the gross monthly real estate commissions generated by their offices, they failed to pay the 1% Transaction Fees due to Plaintiffs on those reported commissions.

ANSWER: Deny.

54. Having spent the majority of 2021 hollowing out his franchises from the inside, in violation of the Franchise Agreements, Dulin recently abandoned his Lafayette franchise altogether. On information belief, Dulin held an auction at his Lafayette office location in early October 2021 to sell office furniture and related items. Thereafter, he immediately closed the office, in violation of his obligation to operate the Lafayette franchise office location through 2023.

ANSWER: Deny.

CLAIMS FOR RELIEF
FIRST CLAIM FOR RELIEF
(RML & RIR Against Defendants - Breach of Contract)

55. Plaintiffs incorporate all of the foregoing paragraphs by reference as if fully set forth herein.

ANSWER: Rhetorical Paragraph 55 makes no allegation that requires a response. Defendants incorporate their responses to Paragraphs 1-54 as if fully restated herein.

56. RIR and Defendants are parties to the Franchise Agreements, which grant third party beneficiary status to RML. The Franchise Agreements between RIR and Hamilton Group are also binding on Dulin pursuant to the Guarantees, wherein Dulin guaranteed full performance under the Franchise Agreements to RML.

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation contained in Paragraph 56 that is inconsistent with the agreements.

57. The Franchise Agreements are valid and binding and constitute fully-enforceable contracts between Plaintiffs and Defendants.

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation contained in Paragraph 57 that is inconsistent with the agreements.

58. Plaintiffs fully performed their obligations under the Franchise Agreements.

ANSWER: Deny.

59. Defendants breached the Franchise Agreements by, at minimum:

a. Improperly steering their RE/MAX Ability Plus sales associates to eXp, in violation of their obligations to promote the business of their offices and not compete with Plaintiffs or the RE/MAX system in Indiana during the respective Terms of the Franchise Agreements;
b. Aligning with eXp through their agreement with the Fazios and Brooke Stines- Broady to obtain eXp Revenue Share Plan compensation, and through Dulin's agreement to allow eXp agents to work out of his Carmel office as a "clubhouse," in violation of their obligation not to compete with Plaintiffs or the RE/MAX system in Indiana during the respective Terms of the Franchise Agreements;
c. Allowing converted eXp agents to conduct business at the Carmel and Lafayette office locations, which prominently displayed the RE/MAX Marks on signage, in violation of the limited license to use the RE/MAX

Marks given them by the Franchise Agreements;

d. Failing to supervise their sales associates in their use of the RE/MAX Marks upon departing from RE/MAX Ability Plus, in violation of the limited license to use the RE/MAX Marks given them by the Franchise Agreements;
e. Failing to timely report gross monthly real estate commissions for the calculation of Transaction Fees owed;
f. Abandoning their Lebanon and Lafayette franchise locations, in violation of their obligation to operate their office through the respective Terms of the Lebanon and Lafayette Franchise Agreements; and
g. In such other ways as may be revealed through discovery or proven at trial.

ANSWER: Deny.

60. As a direct and proximate result of these breaches, Plaintiffs have suffered and continue to suffer damages.

ANSWER: Deny.

61. Plaintiffs are entitled to an award of actual damages resulting from these breaches in an amount to be proven at trial, as well as disgorgement of any profit or benefit Dulin has gained and/or will gain as a result of his breaches.

ANSWER: Deny.

SECOND CLAIM FOR RELIEF

(RML & RIR Against Defendants - Unfair Competition Under 15 U.S.C. § 1125(a) and Indiana Law)

62. Plaintiffs incorporate all of the foregoing paragraphs by reference as if fully set forth herein.

ANSWER: Rhetorical Paragraph 62 makes no allegation that requires a response. Defendants incorporate their responses to Paragraphs 1-61 as if fully restated herein.

63. Defendants unfairly competed against Plaintiffs by, among other things, allowing eXp agents to conduct business on eXp's behalf at Defendants' RE/MAX Carmel and Lafayette offices, which prominently displayed the RE/MAX Marks on signage, likely caused confusion, mistake, or deception as to origin, sponsorship, or approval, in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and in violation of Plaintiffs' rights under Indiana law.

ANSWER: Deny.

64. Defendants' conduct constituted an attempt to misuse and misappropriate the goodwill that RML has developed in the RE/MAX Marks, all to the damage of RML.

ANSWER: Deny.

65. Moreover, Defendants unfairly competed against Plaintiffs by improperly steering RE/MAX Ability Plus sales associates to eXp and affiliating with eXp for their own gain, and at Plaintiffs' expense.

ANSWER: Deny.

66. Defendants' unfair competition was willful, knowing, malicious, and/or intentional.

ANSWER: Deny.

67. As a direct and proximate result of the Defendants' acts of unfair competition, Plaintiffs suffered monetary damages in an amount to be determined at trial.

ANSWER: Deny.

THIRD CLAIM FOR RELIEF

(RML & RIR against Defendants - Declaratory Relief (28 U.S.C. § 2201))

68. Plaintiffs incorporate all of the foregoing paragraphs by reference as if fully set forth herein.

ANSWER: Rhetorical Paragraph 68 makes no allegation that requires a response. Defendants incorporate their responses to Paragraphs 1-67 as if fully restated herein.

69. Plaintiffs and Defendants are parties to the Franchise Agreement for the Lafayette, Indiana location. The Lafayette Franchise agreement contains a specified Term that expires on August 31, 2023.

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation contained in Paragraph 69 that is inconsistent with the agreements.

70. Plaintiffs and Defendants are parties to the Franchise Agreement for

the Lebanon, Indiana location. The Lebanon Franchise Agreement contains a specified Term that expires on November 19, 2024.

ANSWER: The Franchise Agreements speak for themselves. Defendants deny any allegation contained in Paragraph 70 that is inconsistent with the agreements.

71. There is an existing controversy between Plaintiffs, on one hand, and Defendants, on the other, concerning whether the Lafayette and Lebanon Franchise Agreements authorize Defendants to abandon those franchised locations.

ANSWER: Deny.

72. Therefore, pursuant to 28 U.S.C. § 2201, Plaintiffs ask the Court to declare as follows:

a. The Lafayette and Lebanon Franchise Agreements do not authorize Defendants to unilaterally abandon the franchises;

b. Defendants' purported abandonment of the Lafayette and Lebanon franchises is a material breach of the Franchise Agreements; and

c. The specified expiration dates of each Franchise Agreement remain in effect.

ANSWER: Deny.

73. A declaratory judgment by the Court, if rendered or entered on these issues, would end the uncertainty and controversy with respect to the rights, status,

or other legal relations between the parties.

ANSWER: Deny.

PRAYER FOR RELIEF

Defendants deny that Plaintiffs are entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

Defendants assert the following affirmative defenses to the Complaint filed by Plaintiffs and reserves the right to supplement as discovery is ongoing:

1. Plaintiffs' claims are barred to the extent that they have failed to take reasonable steps to mitigate their alleged damages, if any.

2. Plaintiffs' claims are barred to the extent that their alleged damages, if any, were caused by their own acts and/or omissions.

3. Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of estoppel, waiver, laches, and/or unclean hands.

4. Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

5. Plaintiffs' claims are barred, in whole or in part, due to Plaintiffs' initial material breach of the agreements, which has not been excused by Defendants, and/or Plaintiffs' constructive termination of the agreements.

6. Plaintiffs' claims may be barred, in whole or in part, to the extent that Defendants' performance of any obligations in the agreements that are referenced in the Complaint were excused by the Plaintiffs' prior material breach or where Plaintiff

prevented or frustrated Defendants' performance.

7. Plaintiffs' claims are barred, in whole or in part, due to any failure to perform a condition precedent.

8. Plaintiffs' claims may be barred by an accord and satisfaction.

9. Plaintiffs' claim for declaratory relief is not appropriate given the availability of adequate remedies under the law for any of Plaintiffs' alleged damages.

10. Plaintiffs' claims may be barred to the extent that they are determined to be frivolous and without merit, which may entitle Defendants to collection from Plaintiffs their costs, including reasonable attorneys' fees, incurred in defending against the Complaint.

11. Defendants reserve the right to amend these Affirmative Defenses to the extent that additional facts become known to them with respect to Plaintiffs' Complaint.

JURY TRIAL DEMAND

Defendants demand a trial by jury of all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

JAMES E. DULIN II AND THE HAMILTON GROUP, INC.'S COUNTERCLAIMS

For their counterclaims against Counterclaim Defendants RE/MAX, LLC and RE/MAX INTEGRATED REGIONS, LLC, Counterclaim Plaintiffs James E. Dulin II and The Hamilton Group state:

PARTIES AND JURISDICTION

1. James E. Dulin II ("Mr. Dulin") is an individual who resides in Hamilton County, Indiana.

2. The Hamilton Group, Inc. ("Hamilton Group") is an Indiana corporation whose principal place of business is located at 200 S. Rangeline Road, Suite 129, Carmel, IN 46032. Collectively, Mr. Dulin and the Hamilton Group are the "Counterclaim Plaintiffs."

3. RE/MAX, LLC is a Delaware limited liability company whose principal place of business is located at 5075 S. Syracuse Street, Denver, CO 80237.

4. RE/MAX Integrated Regions, LLC (collectively with RE/MAX, LLC "RE/MAX") is a Delaware limited liability company whose principal place of business is located at 5075 S. Syracuse St., Denver, CO 80237, and whose sole Member is RE/MAX, LLC.

5. The Court has subject matter jurisdiction over this action as the RE/MAX's claims arise pursuant to 15 U.S.C. 1121(a) and 28 U.S.C. §§ 1331 and 1338 in that this civil action arises under the Trademark Laws of the United States,

Lanham Act 15 U.S.C. § 1051 *et seq.* The Court has supplemental jurisdiction over Counterclaim Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. The Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 in that this civil action is between citizens of different states and the amount in controversy exceeds $75,000, exclusive of interest and costs.

6. This Court has personal jurisdiction over this claim because Mr. Dulin and the Hamilton Group reside in Indiana.

FACTUAL ALLEGATIONS

7. The Hamilton Group is the Franchisee for multiple RE/MAX Offices in central Indiana.

8. Mr. Dulin is the President of the Hamilton Group.

9. The Hamilton Group's RE/MAX franchises at issue do business as RE/MAX Ability Plus ("REAB").

10. Through its sales agents, REAB represents buyers and sellers through the process of buying and selling homes, from marketing a home to closing.

11. All listing agreements and all buyer contracts are between the individual real estate customer and REAB. RE/MAX has no contractual relationship with the buyers and sellers of homes (i.e. REAB's customers).

12. RE/MAX assumes no risk in connection with the operation of real estate services businesses in Indiana. Unlike REAB, RE/MAX is not a licensed broker.

13. REAB is responsible for all overhead associated with running its real estate offices, including leases, vendor costs, copy machines, utilities, and marketing.

14. To offer real estate services, REAB is required to have a licensed real estate broker to supervise the performance of its sales agents. Sales agents must be licensed, affiliated with a broker, and work under the supervision of that broker. Mr. Dulin is the REAB real estate broker. RE/MAX does not engage in the business of selling real estate in Indiana.

15. REAB has entered contractual relationships with the individual sales agents, with each individual sales agent being an independent contractor to REAB. REAB provides logistical support to these sales agents. RE/MAX explicitly disclaims any contractual relationship with or responsibility for the performance of the sales agents affiliated with broker/owners.

RE/MAX's Franchise Agreements

16. RE/MAX requires franchisees like The Hamilton Group to enter into a separate franchise agreement for each location it operates. RE/MAX dictates the form of these franchise agreements (hereinafter referred to as "Franchise Agreement(s)"). A true and accurate copy of a Franchise Agreement is attached as Exhibit A).

17. Although required by RE/MAX to enter into a separate Franchise Agreement for each location, REAB operated as a single integrated business with four active office locations, and it was not practical for REAB to operate in any other way.

18. Each separately franchised RE/MAX office must pay various fees to RE/MAX, such as an Initial Franchise Fee, and, upon renewal of its Franchise

Agreement, a Renewal Fee. REAB also pays RE/MAX dues for each of its sales agents. In addition, REAB pays substantial monthly fees to RE/MAX, including Management and Promotion Fees based on the number of sales agents, as well as a Transaction Fee comprised of 1% of gross monthly real estate commissions earned by its sales agents.

19. RE/MAX requires that the owners of businesses like REAB and the Hamilton Group to agree to be personally bound by the terms and conditions of those franchise agreements and that they execute personal guarantees for their performance.

The Franchise Agreements between REAB and RE/MAX

20. The Hamilton Group and RE/MAX were parties to four Franchise Agreements. At issue are the four Franchise Agreements described in the following paragraphs.

21. RE/MAX and REAB entered into a Franchise Agreement dated August 27, 2014 for a RE/MAX franchised real estate office located at 12811 New Market Street, Carmel, Indiana 46032 ("West Clay Office"). The Franchise Agreement for the West Clay Office expired on August 27, 2021, as the original five-year term was amended in 2019.

22. RE/MAX and REAB entered into a Franchise Agreement dated September 25, 2014 for a RE/MAX franchised real estate office located at 200 S. Rangeline Road, Carmel, Indiana ("Carmel Office"). The Franchise Agreement for the

Carmel Office expired on September 25, 2021, as the original five-year term was amended in 2019.

23. RE/MAX and REAB entered into a Franchise Agreement dated August 31, 2017 for a RE/MAX franchised real estate office located at 615 Ferry Street, Lafayette, Indiana ("Lafayette Office"). The Franchise Agreement for Lafayette Office expires on August 23, 2023, as the original five-year term was amended in 2019.

24. RE/MAX and REAB entered into a Franchise Agreement dated October 26, 2019 for a RE/MAX franchised real estate office located at 106 N. Lebanon Street, Lebanon, Indiana 46052 ("Lebanon Office").

25. The Franchise Agreement for the Lebanon Office was originally scheduled to expire on November 19, 2024.

26. In March 2021, Mr. Dulin and RE/MAX agreed to terminate the Lebanon Franchise Agreement. Correspondingly, RE/MAX approved the transfer of all agents from the Lebanon Office to other REAB offices.

27. However, RE/MAX later denied that the agreed early termination of the Lebanon Franchise Agreement ever happened. Instead, RE/MAX took the position (falsely) that Mr. Dulin had agreed to extend the Carmel Franchise Agreement by two years. These misstatements occurred via emails: one email sent on April 9, 2021, by Stacy Gillen; and one email sent on May 27, 2021, by Fiona Petrie.

28. Mr. Dulin never agreed to any such extension and informed RE/MAX as such.

RE/MAX's Interference with the sale of the Lafayette Office

29. On or around January 2019, Mr. Dulin informed RE/MAX that the Hamilton Group wished to sell Lafayette Office.

30. Eventually, Mr. Dulin entered negotiations with Mike Jones ("Mr. Jones") for the sale of the Lafayette Office to Mr. Jones.

31. In August 2021, Mr. Jones and Mr. Dulin reached an agreement in which Mr. Jones would purchase the Lafayette Office for a single dollar. A true and accurate copy of the purchase proposal outline is attached as Exhibit B.

32. Without explanation, Mr. Jones then suddenly withdrew, and instead opened his own ReMax office in Lafayette, Indiana under a separate Franchise Agreement.

33. Further, RE/MAX allowed Mr. Jones to recruit from the Hamilton Group's Lafayette Office, in direct violation of RE/MAX's Predatory Recruiting Policy described below. Without this predatory recruiting, Mr. Jones would have been unable to open his own RE/MAX office in Lafayette.

34. Mr. Jones even purchased all REAB's Lafayette's Office in an auction, even though it had previously been offered to him – along with the whole Lafayette Office – for one dollar.

35. Upon information and belief, it was due to RE/MAX's interference that Mr. Jones withdrew from the purchase of the Lebanon Office.

RE/MAX's Franchise Agreements Effectively Prohibit a Broker/Owner From Leaving RE/MAX

36. The standard term for each Franchise Agreement is five years. At the expiration of the five-year term, the Franchise Agreements provide that a franchisee can renew, continue operating on a month-to-month basis, or terminate its relationship with RE/MAX.

37. Because the various offices operated by REAB were acquired or opened at various times, the various Franchise Agreements are on staggered terms and did not or do not expire at the same time, as explained above.

38. Federal law requires that, prior to execution of a franchise agreement, franchisors provide a Franchise Disclosure Document ("FDD") containing specific items of material information concerning the offered franchise, its officers, and other franchisees. 16 C.F.R. § 436.

39. Each FDD provided by RE/MAX to REAB required that REAB sign a receipt which included the statement "IF RE/MAX REGIONAL DOES NOT DELIVER THIS DISCLOSURE DOCUMENT ON TIME OR *IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR MATERIAL OMISSION*, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION…." (emphasis added).

40. Section 5.F of the Franchise Agreements includes a one-year post-termination noncompete provision. The provision states:

> You acknowledge and agree that we would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information between and among RE/MAX offices, us, RE/MAX, LLC and RE/MAX Affiliates if you or your Owners or any immediate family member (as defined below) were permitted to engage in other businesses competitive with RE/MAX offices or with us or RE/MAX, LLC. Accordingly, you agree that without our prior written consent, which we have the unfettered right to withhold, none of you, nor if you are an entity, your Owners, or your Sales Associates (including, but not limited to, your manager or designated or managing broker of record), or the immediate family members (as defined below), of any of you or them will, during the Term, directly or indirectly, as an officer, director, shareholder, partner, manager, employee, agent, consultant, independent contractor or otherwise, operate, manage, own, have an interest in or become affiliated with in any other way (1) any non RE/MAX real estate service business; or (2) any other business or enterprise offering products or services that directly or indirectly compete with the products and services offered by RE/MAX offices, RE/MAX Regional or RE/MAX, LLC, or any of our or RE/MAX, LLC's affiliates. For purposes of this Agreement, an "immediate family member" shall include a spouse, a "significant other" or a "domestic partner" with whom you reside, as well as your parents, step-parents, in-laws, siblings, children and step-children and each of their immediate family members.

41. RE/MAX has an undisclosed policy of refusing to allow owners of multiple locations with Franchise Agreements on staggered terms like REAB to have a coterminous expiration date for all locations because those owners might choose to leave the RE/MAX network upon the expiration of their Franchise Agreements. The Middlesex Superior Court for the Commonwealth of Massachusetts, in the case of *Real Estate Visionaries, Inc. d/b/a Leading Edge ("Leading Edge") vs. RE/MAX* (a true and accurate copy is attached as Exhibit C) found that such an undisclosed policy exists.

42. The in-term noncompete provision of Section 5.F, coupled with RE/MAX's undisclosed policy of refusing to allow multi-point owners to have a coterminous expiration date, effectively turns the Franchise Agreements into perpetual agreements with no expiration dates, rather than the agreements with five-year term, as stated in the FDDs provided by RE/MAX to REAB, the Hamilton Group, and Mr. Dulin.

43. Because the in-term noncompete provision of Section 5.F of the unexpired Franchise Agreement prohibits REAB, the Hamilton Group, or Mr. Dulin from owning or operating any non-RE/MAX real estate services business anywhere in the world so long as a single RE/MAX office remains in term, the Counterclaim Plaintiffs cannot operate any of its expired locations as independent real estate agent sales offices, or transfer its expired real estate offices to another franchisor, until all of its current Franchise Agreement have expired.

44. RE/MAX improperly uses the leverage it obtains through the interplay between the expiration date of each Franchise Agreement and the in-term noncompete provision of an unexpired Franchise Agreement to dictate increasingly onerous and anticompetitive terms on multi-point franchises like REAB. The Counterclaim Plaintiffs are left to choose between systematically closing their offices one-by-one and destroying the value of 30 years of hard work or acquiescing to the increasingly unreasonable terms dictated by RE/MAX.

45. None of the FDDs provided by RE/MAX warned the Counterclaim Plaintiffs that they were entering into a perpetual agreement to be RE/MAX franchisees or that they would have to destroy the good will and reputation built over 30 years to leave RE/MAX; or about RE/MAX's undisclosed policy of refusing to allow multi-point owners to have a coterminous expiration date; or the effect of the in-term noncompete provision on multi-point owners, even though this was material information that RE/MAX was required to disclose prior to the execution of Franchise Agreements.

46. In the *Leading Edge* case, RE/MAX executives testified that the combination of staggered terms for multi-point franchises and the post-term non-compete, make it impossible or nearly impossible for a multi-point franchise to disengage from Re/Max and remain in the industry, without at least dismantling the operation they have built.

47. Re/Max makes it nearly impossible for its franchisees to compete against Re/Max in the future, whether as an independent business or with a different franchise.

48. In the *Leading Edge* case, RE/MAX executives testified that they do not acknowledge a scenario where a former franchisee can continue to operate, and obtain the benefits from, a multiple-location real estate brokerage.

49. The motivation behind RE/MAX's contracting practices-namely the staggered termination dates for multi-point franchises and post-term non-competes-is to restrain competition from former RE/MAX franchisees, to make it impossible or exceedingly difficult for a franchisee to extract itself from RE/MAX and to compete against RE/MAX after franchise expiration.

RE/MAX'S Predatory Recruiting Policy

50. In the *Leading Edge* case, the Middlesex Superior Court made the following findings:

a. In 2013, Re/Max issued Policy Directive No. 1 captioned "Predatory Recruiting Practices: Re/Max to Re/Max Sales Associate Recruiting

Policy." The policy directive supplements each Franchise Agreement. It has remained in effect since it was issued, and therefore applies to, and supplements, all of the relevant Franchise Agreements between REAB and RE/MAX.

b. In the Policy Directive, Re/Max explained that "[s]ince [Re/Max's] inception, Re/Max ownership and Regional management have discouraged Re/Max Broker/Owners from competing with each other for existing Re/Max sales agents." "Of particular concern is Sales Associate recruiting activity that through predatory practices aims purposefully to induce existing Sales Associates to change their Re/Max office affiliation."

c. Policy Directive No. 1 prohibits, and penalizes franchisees financially for, "predatory recruiting." Predatory recruiting includes, without limitation,

> "[t]he purposeful solicitation by a Re/Max office of existing Re/Max Sales Associates from another Re/Max office with the intention of seeking a change in office affiliation .... In particular, current Re/Max Sales Associates should not be invited to any recruiting, educational or other social event at another Re/Max office, other than "Grand Opening " or similar major events recognized by the Regional Office. Further, with respect to such recognized major events, where Re/Max Sales Associates ... are invited ... , but [their respective Broker/Owners or Managers] are not also invited, such Sales Associates invitations will be deemed to be predatory recruiting….

d. ReMax's cover memo announcing the policy, as well as Breault's trial testimony, explain that the policy directive was designed to avoid "the disruptive effects of predatory recruiting" upon Re/Max franchisees.

51. The Predatory Recruiting Policy was incorporated into the Franchise Agreements between RE/MAX and the Counterclaim Plaintiffs.

52. The Predatory Recruiting Policy applied to both Counterclaim Plaintiffs and RE/MAX. [2]

53. RE/MAX's prohibition on predatory recruiting is not without good reason. Sales agents are essential to REAB's business. The sales agents work through each aspect of buying or selling a home.

54. The business is built through personal relationships. Productive real estate agents build longer-term relationships and networks in their communities.

55. Repeat clients or referrals constitute approximately 60% of REAB's business.

56. In turn, REAB generates revenue through sales commissions on real estate transactions.

57. REAB works hard to retain its agents. REAB provides its sales agents with administrative support, training, and coaching.

58. Simply put, REAB cannot operate without its sales agents.

[2] Although the Predatory Recruiting Practice Policy has been the source of other litigation against RE/MAX, RE/MAX has refused to produce a copy in discovery in this case.

59. However, despite the importance of sales agents to REAB's success, and despite RE/MAX's own Predatory Recruiting Policy, RE/MAX took part in and encouraged the predatory recruiting and poaching of REAB's sales agents.

60. For example, after Mr. Jones opened his RE/MAX franchise in Lafayette, RE/MAX allowed and/or encouraged the recruiting of sales agents from the REAB's Lafayette Office.

61. The Counterclaim Plaintiffs are specifically aware that Stacy Gillen actively recruited Denise Wilson, a sales agent at REAB's Lafayette Office, to move to Mr. Jones' office.

62. Section 14(F) of the Franchise Agreements allow RE/MAX the right to solicit sales agents 180 days prior to the expiration of the Franchise Agreement. RE/MAX allowed and/or encouraged the recruiting of sales agents from the REAB's Lafayette Office to Mr. Jones' Office as early as August 2021 – despite the fact that the Franchise Agreement for Lafayette Office does not expire until August 23, 2023.

63. As a further example, Jennil Salazar was one of REAB's highest producing agents.

64. Ms. Salazar engaged in a conversation with Fiona Petrie, an Executive Vice President of RE/MAX, about purchasing a RE/MAX franchise.

65. Ms. Salazar was encouraged by RE/MAX to leave REAB and purchase her own franchise. Ms. Salazar then engaged in discussions to purchase the West Clay Office, and RE/MAX went so far as to draft and provide the transfer documents.

66. RE/MAX had taken one of REAB's highest producing agents and recruited her to purchase the West Clay Office, in direct violation of RE/MAX's own Predatory Recruiting Policy.

67. Additionally, RE/MAX allowed or encouraged the predatory recruiting of REAB's other sales agents, including, but not limited to, Shell Barger, Bill Mitchell, Cara Gail Geradot, Hellen Metken, Jun, Liu, and Shelly Walters.

RE/MAX's Commingling of Funds

68. Under the Section 6(C) of Franchise Agreements, the Counterclaim Plaintiffs were required to pay a monthly "Promotion Fee." Pursuant to the Franchise Agreements, "[s]uch funds, and any interest or other income earned on such funds, become the non-refundable property of RE/MAX INTEGRA Promotions, Midwest, will be accounted for separately from our other funds and will be used exclusively for institutional advertising for the benefit of those RE/MAX offices operating within our region."

69. Under the Section 6(E) of Franchise Agreements, the Counterclaim Plaintiffs were required to pay a monthly "Hot Air Balloon Fund Fee." Pursuant to the Franchise Agreements, the "Hot Air Balloon Fund Fee is used to promote the system in such manner as we may determine from time-to-time in our discretion. Such funds, and any interest or other income earned on such funds, are non-refundable, will be accounted for separately from our other funds and will be used

exclusively for promoting the System for the benefit of those RE/MAX offices operating within our region."

70. Further, RE/MAX's FDD's in 2013 and 2014 stated that the promotional fees paid by franchisees were paid to Re/Max and administered by Re/Max Promotions and that "no money from the Promotion Fee or the Hot Air Balloon Fund Fee was used for activities that are principally the solicitation of franchises," as distinct from promoting existing franchises, i.e., institutional advertising.

71. RE/MAX would provide discounts to franchisees and that Re/Max's accounting "undermines" RE/MAX's statements that "all the money collected for promotions is used for that purpose. The Middlesex Superior Court for the Commonwealth of Massachusetts, in the case of *Leading Edge vs. RE/MAX* made this exact finding (Exhibit C).

72. Upon information and belief, RE/MAX continues to improperly commingle these funds and not using the fund as required under the Franchise Agreements in the Indiana Region.

The RE/MAX Franchise Association

73. Around September 2019, in speaking with other RE/MAX franchisees and owners, Mr. Dulin and the other RE/MAX franchisees and owners decided that they would benefit from joint representation in dealing with RE/MAX.

74. Therefore, the RE/MAX franchisees and owners created the RE/MAX Franchise Association ("Association"). Mr. Dulin was an integral part of the Association.

75. At first, there was much excitement and enthusiasm within the Association.

76. However, over the next several months and years of the Association, other RE/MAX franchisees and owners would suddenly and inexplicably tell Mr. Dulin that they could no longer participate in the Association.

77. For example, another franchisee left the Association claiming that they were "too busy." However, the franchisee shortly thereafter opened a new franchise.

78. Upon information and belief, RE/MAX discouraged the RE/MAX franchisees and owners from participating in the Association. For example, RE/MAX was required to disclose the existence of the Association to franchisees and inform the franchisee they could join. Instead, RE/MAX never disclosed this information to the existing franchisees or new ones.

79. Upon information and belief, the RE/MAX franchisees and owners left the Association, or refused to join the Association, out of fear of RE/MAX's retaliation.

CAUSES OF ACTION

COUNT I: Breach of Contract

80. The Counterclaim Plaintiffs incorporate the allegations above.

81. The Franchise Agreements are valid and enforceable contracts.

82. Under the Section 6(C) of Franchise Agreements, the Counterclaim Plaintiffs were required to pay a monthly "Promotion Fee." Pursuant to the Franchise Agreements, those funds "will be accounted for separately from our other funds and will be used exclusively for institutional advertising for the benefit of those RE/MAX offices operating within our region."

83. Under the Section 6(E) of Franchise Agreements, the Counterclaim Plaintiffs were required to pay a monthly "Hot Air Balloon Fund Fee." Pursuant to the Franchise Agreements, the "will be accounted for separately from our other funds and will be used exclusively for promoting the System for the benefit of those RE/MAX offices operating within our region."

84. RE/MAX has and is improperly commingling these funds and not using the fund as required under the Franchise Agreements.

85. Therefore, RE/MAX has breached the Franchise Agreements.

86. As a direct and proximate result of the breaches by RE/MAX, the Counterclaim Plaintiffs were damaged and continue to incur damages for which RE/MAX is liable.

COUNT II: Breach of Contract

87. The Counterclaim Plaintiffs incorporate the allegations above.

88. RE/MAX and the Hamilton Group entered into a Franchise Agreement for the Lebanon Office.

89. The Franchise Agreement for the Lebanon Office is a valid and enforceable contract.

90. As described above, the Parties mutually agreed to amend the Franchise Agreement for the Lebanon Office by terminating the Agreement and allowing the Lebanon Office to close without extending the term of any other Franchise Agreement for any other franchise location.

91. RE/MAX has breached the amended Franchise Agreement to the Lebanon Office by claiming that the Hamilton Group can only close the Lebanon Office if the Hamilton Group extends the term of the Franchise Agreement for the Carmel Location.

92. As a direct and proximate result of the breaches by RE/MAX, the Counterclaim Plaintiffs damaged and continue to incur damages for which RE/MAX is liable.

COUNT III: Declaratory Judgment

93. The Counterclaim Plaintiffs incorporate the allegations above.

94. The Franchise Agreement for the Lebanon Office is a valid and enforceable contract.

95. As described above, the Parties mutually agreed to amend the Franchise Agreement for the Lebanon Office by terminating the Agreement and allowing the Lebanon Office to close without extending the term of any other Franchise Agreement for any other franchise location.

96. RE/MAX has breached the amended Franchise Agreement to the Lebanon Office by claiming that the Hamilton Group can only close the Lebanon Office if the Hamilton Group extends the term of the Franchise Agreement for the Carmel Location.

97. There is an existing controversy between the Counterclaim Plaintiffs and RE/MAX concerning whether the Franchise Agreement for the Lebanon Office as terminated.

98. Therefore, pursuant to 28 U.S.C. § 2201, the Counterclaim Plaintiffs request that the Court grant declaratory relief and declare the Franchise Agreement for the Lebanon Office as terminated and declare the term for the Franchise Agreement for the Carmel Office was not extended.

99. A declaratory judgment by the Court, if rendered or entered on these issues, would end the uncertainty and controversy with respect to the rights, status, or other legal relations between the parties.

COUNT IV: Declaratory Judgment

100. The Counterclaim Plaintiffs incorporate the allegations above.

101. The Franchise Agreements are valid and enforceable contracts.

102. The non-compete provisions, in combination with the staggered terms required by RE/MAX, are unreasonable restraints on trade.

103. The only basis for a non-compete is to protect confidential information, but that Re/Max never disclosed confidential information to the Counterclaim Plaintiffs during their long relationship, and therefore Re/Max cannot enforce any non-compete provision.

104. Further, the non-compete is invalid because it impermissibly seeks to limit only ordinary competition.

105. There is an existing controversy between the Counterclaim Plaintiffs and RE/MAX concerning whether the non-compete of the Franchise Agreements is enforceable.

106. Therefore, pursuant to 28 U.S.C. § 2201, the Counterclaim Plaintiffs requests that the Court grant declaratory relief and declare the non-compete provisions of the Franchise Agreements are invalid and are not enforceable.

107. A declaratory judgment by the Court, if rendered or entered on these issues, would end the uncertainty and controversy with respect to the rights, status, or other legal relations between the parties.

COUNT V: Unfair and Deceptive Trade Practices

108. The Counterclaim Plaintiffs incorporate the allegations above.

109. Indiana's Antitrust Act, Indiana Code Section 24-1-2-1 *et seq.*, prohibits any scheme, contract, or combination in restraint of trade or commerce.

110. Further, under Indiana law a covenant in general restraint of trade is void as against public policy.

111. RE/MAX engaged in a restraint of trade and unfair practices when it staggered the terms of the Franchise Agreements, combined with the RE/MAX's predatory recruiting and interfering in the sale of the Lafayette location to Mr. Jones.

112. As the Middlesex Superior Court stated in the *Leading Edge* case (at p. 65): "[i]f a franchisee had the temerity to not renew, Re/Max would not permit a gradual disengagement from Re/Max, even if that was the natural result of staggered expirations. Instead, RE/MAX chose to punish the franchisee by effectively terminating the franchise prematurely and, as best it could, undermining the franchisee's business."

113. As a result of RE/MAX's unfair trade practices, the Counterclaim Plaintiffs have and will continue to suffer damages.

COUNT VI: Breach of Contract

114. The Counterclaim Plaintiffs incorporates the allegations above.

115. The Franchise Agreements were valid and enforceable agreements between the Hamilton Group and RE/MAX.

116. RE/MAX's Predatory Recruiting Policy supplements the Franchise Agreements and therefore became a part of the Franchise Agreements.

117. By RE/MAX's conduct as described above, RE/MAX breached the Franchise Agreements when it engaged in and encouraged the predatory recruiting of REAB's sales agents.

118. As a direct and proximate result of the breach by RE/MAX, the Counterclaim Plaintiffs have and continues to suffer damage for which RE/MAX is liable.

COUNT VII: Tortious Interference with a Contract/Business Relationship

119. The Counterclaim Plaintiffs incorporate the allegations above.

120. The Counterclaim Plaintiffs had both valid and enforceable contracts and valid relationships with its sales agents, both of which RE/MAX was aware.

121. Through its conduct as described above, RE/MAX intentionally interfered with those contracts and relationships.

122. There was no justification for RE/MAX's interference.

123. As a direct and proximate result of RE/MAX's wrongful interference, the Counterclaim Plaintiffs have suffered damages.

124. RE/MAX acted illegally in achieving its ends.

125. As a direct and proximate result of RE/MAX's tortious interference, Counterclaim Plaintiffs have lost valuable business relationships, and they expect to suffer lost income and profits as a result of those lost relationships.

126. If RE/MAX is allowed to continue improperly tortiously interfering with Counterclaim Plaintiffs' business relationships, they will suffer irreparable harm in the form of lost business relationships and good will.

127. Counterclaim Plaintiffs lack an adequate remedy at law for RE/MAX's tortious interference.

COUNT VIII: Breach of Contract

128. The Counterclaim Plaintiffs incorporates the allegations above.

129. The Franchise Agreements were valid and enforceable agreements between the Hamilton Group and RE/MAX.

130. Section 14(F) of the Franchise Agreements allow RE/MAX the right to solicit sales agents 180 days prior to the expiration of the Franchise Agreement.

131. RE/MAX allowed and/or encouraged the soliciting and/or solicited sales agents from the REAB's Lafayette Office to Mr. Jones' Office as early as August 2021 – despite the fact that the Franchise Agreement for Lafayette Office does not expire until August 23, 2023.

132. By RE/MAX's conduct as described above, RE/MAX breached the Franchise Agreements when it engaged in and encouraged the predatory recruiting of REAB's sales agents.

133. As a direct and proximate result of the breach by RE/MAX, the Counterclaim Plaintiffs have and continues to suffer damage for which RE/MAX is liable.

COUNT IX: Tortious Interference with a Business Relationship

134. The Counterclaim Plaintiffs incorporates the allegations above.

135. The Counterclaim Plaintiffs had a valid business relationship with Mike Jones when it came to the sale of the Lafayette Office, of which RE/MAX was aware.

136. Through its conduct as described above, RE/MAX intentionally interfered with the contract and relationship, including the predatory recruiting of sales agents from REAB's Lafayette Office.

137. As a result of RE/MAX's interference described above, Mr. Jones backed out of the purchase of the Lafayette location.

138. There was no justification for RE/MAX's interference.

139. As a direct and proximate result of RE/MAX's wrongful interference, the Counterclaim Plaintiffs have suffered damages.

140. RE/MAX acted illegally in achieving its ends.

141. As a direct and proximate result of RE/MAX's tortious interference, Counterclaim Plaintiffs have lost valuable business relationships, and they expect to suffer lost income and profits as a result of those lost relationships.

142. If RE/MAX is allowed to continue improperly tortiously interfering with Counterclaim Plaintiffs' business relationships, they will suffer irreparable harm in the form of lost business relationships and good will.

143. Counterclaim Plaintiffs lack an adequate remedy at law for RE/MAX's tortious interference.

COUNT X: Tortious Interference with a Contractual and Business Relationship

144. The Counterclaim Plaintiffs incorporate the allegations above.

145. Counterclaim Plaintiffs had both valid and enforceable contracts and valid relationship and with other franchises through the other Franchisees, both of which RE/MAX was aware.

146. Through its conduct as described above, RE/MAX intentionally interfered with those contracts and relationships.

147. There was no justification for RE/MAX's interference.

148. As a direct and proximate result of RE/MAX's wrongful interference, the Counterclaim Plaintiffs have suffered damages.

149. RE/MAX acted illegally in achieving its ends.

150. As a direct and proximate result of RE/MAX's tortious interference, Counterclaim Plaintiffs have lost valuable business relationships, and they expect to suffer lost income and profits as a result of those lost relationships.

151. If RE/MAX is allowed to continue improperly tortiously interfering with Counterclaim Plaintiffs' business relationships, they will suffer irreparable harm in the form of lost business relationships and good will.

152. Counterclaim Plaintiffs lack an adequate remedy at law for RE/MAX's tortious interference.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiffs respectfully request that the Court enter judgment in their favor, and against Counterclaim Defendants and award Counterclaim Plaintiffs:

A. All damages allowable by law and statute incurred as a result of Counterclaim Defendants' conduct, including the recovery of actual, compensatory and consequential damages; and disgorgement of profits Defendants have gained and will gain as a result of their contractual and statutory violations.

C. Declaratory relief in the form requested in Paragraphs 98 and 106, above.

D. Reasonable attorneys' fees and costs Counterclaim Plaintiffs have incurred and will incur in this action.

E. Award Counterclaim Plaintiffs all further relief in law or in equity, including, but not limited to, fees paid to the Counterclaim Defendants which were impermissibly used, to which Plaintiffs may show they are justly entitled.

Dated: February 25, 2022

Respectfully submitted,

/s/ Joshua R. Lowry

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EXHIBIT A

RE/MAX OF INDIANA LIMITED PARTNERSHIP

FRANCHISE AGREEMENT

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FRANCHISE AGREEMENT

This Franchise Agreement (this "Agreement") is effective as of September 25, 2014 (the "Agreement Date"). The parties to this Agreement are you, Veritas Ventures, LLC, as Franchise Owner, and us, RE/MAX of Indiana Limited Partnership dba RE/MAX INTEGRA, Midwest, an Indiana limited partnership and regional subfranchisor of RE/MAX, LLC, having a place of business at 9963 Crosspoint Blvd., Indianapolis, Indiana 46256, and, if you are a partnership, corporation, limited liability company or other legal entity, your "Owners" (defined below). This Agreement is for a RE/MAX® real estate service office to be located at: **200 S. Rangeline Road, Carmel, Indiana**; and operated under the trade name: **RE/MAX Ability Plus**.

1. INTRODUCTION.

This Agreement has been written in an informal style in order to make it more easily readable and to be sure that you become thoroughly familiar with all of the important rights and obligations this Agreement covers before you sign it. In this Agreement, we refer to RE/MAX of Indiana Limited Partnership dba RE/MAX INTEGRA, Midwest as "we," "us" or "RE/MAX Regional"; and to RE/MAX, LLC as "RE/MAX, LLC." We refer to each person who signs this Agreement as "you," "Franchise Owner" or "Franchisee." If you are presently a corporation, partnership, limited liability company or other business entity (collectively "Business Entity"), or if you, as an individual or individuals, make a subsequent assignment or transfer of this Agreement to a Business Entity under Section 12 of this Agreement, or if this Agreement is being executed in connection with the renewal of the Franchise and you are presently Business Entity, the provisions of this Agreement also will be applicable to your direct and indirect owners. We have relied on the qualifications, business skill, financial capability and personal character of such owners in entering into this Agreement or in permitting such assignment or transfer. Such owners will be referred to in this Agreement as "Owners." If you are a corporation, partnership, limited liability company or other business entity that is owned, in whole or in part, by one or more other business entities (a parent entity), reference to "Owners" in this Agreement will also include the individual or individuals who own the parent entity.

Through the expenditure of considerable time, effort and money, RE/MAX, LLC has devised and promoted for the benefit of RE/MAX Regional and other RE/MAX subfranchisors and franchisees (collectively "RE/MAX Affiliates") a system (the "System" or "RE/MAX System") for the establishment and operation of offices (a "RE/MAX office" or "RE/MAX offices") offering high quality real estate services under the name "RE/MAX®" and certain other service marks, trademarks, trade dress and other commercial symbols, including the RE/MAX Balloon and Design, the red-over-white-over-blue horizontal bar design and such other service marks, trademarks, trade dress and symbols as RE/MAX, LLC may develop, acquire, or license for RE/MAX Affiliates' use from time-to-time (the "RE/MAX Marks"). These high quality real estate services are provided under the RE/MAX Marks through a network of RE/MAX franchisees and their affiliated independent contractors (the "RE/MAX Network"). The distinguishing characteristics of the System include, but are not limited to:

(1) Common use and promotion of the RE/MAX Marks;

(2) Distinctive sales and promotional materials;

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(3) Standardized supplies and other materials used in RE/MAX offices;

(4) Centralized advertising, promotional and referral services;

(5) Recommended procedures for the operation of RE/MAX offices providing efficient, high quality and courteous services to the public;

(6) A standardized uniform system for the operation of a real estate service office in accordance with ethical standards and policies; and

(7) A high commission concept.

We own the right to franchise the operation of RE/MAX offices under the RE/MAX Marks and the System in this region.

This Franchise Agreement is being presented to you because of the desire you have expressed to obtain the right to own and be franchised to operate a RE/MAX office. In signing this Agreement, you acknowledge: (1) your understanding of the importance of our high standards of quality and service and the necessity of operating your RE/MAX office in conformity with our standards and specifications; (2) that you are presently a licensed real estate broker under the laws of the state in which you will operate a RE/MAX office or that you will secure the services of a responsible and properly licensed real estate broker, acceptable to us under whose license the Franchise will be conducted (the "Manager") prior to commencing operations under this Agreement; and (3) that you will be responsible for the management and development of the RE/MAX office and that you or the Manager will actively participate in and oversee the daily management, operation and conduct of the RE/MAX office. You represent to us, as an inducement to our entering into this Agreement with you, that there have been no misrepresentations to us, or material omissions, in this Agreement, in your application for the rights granted by this Agreement or in the financial information provided by you and your Owners. You further represent that you have dealt in many varied business transactions in the past which have been of greater complexity than this transaction, and that you are not purchasing a RE/MAX franchise for speculative purposes.

2. GRANT AND RENEWAL OF FRANCHISE.

A. GRANT AND TERM OF FRANCHISE.

(1) Grant.

Subject to the provisions of this Agreement, we grant to you a franchise (the "Franchise"), and you undertake the obligation, to establish and own a single RE/MAX office (the "Office") using the distinguishing characteristics of the System, to be operated only at the location (the "Premises") and only under the trade name identified on the first page of this Agreement, both of which must be approved in advance by RE/MAX Regional. You acknowledge and represent that you have contacted the appropriate state regulatory agencies to confirm that the self-standing portion of the trade name (that portion of the trade name that does not include the RE/MAX mark) is available. You acknowledge and agree that neither our approval, nor the approval of a state regulatory agency, of the self-standing portion of the trade

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name constitutes an assurance, representation or warranty of any kind, express or implied, that a prior user of the self-standing portion of the trade name does not exist or that a prior user will not assert rights in that name. If the location of the Premises has not been selected and approved as of the Agreement Date, and the parties cannot agree on a mutually acceptable location within ninety (90) days of the Agreement Date, it will be deemed to be a failure of a material condition precedent, entitling us, upon ninety (90) days notice of default, to terminate this Agreement without refund of the initial franchise fee. You acknowledge and agree that our approval of the location of the Premises does not constitute an assurance, representation or warranty of any kind, express or implied, as to the suitability of the location for the Office or as to the profitability of a RE/MAX office operated at that location. You further acknowledge and agree that you have independently investigated the suitability of the location of the Office, and that RE/MAX Regional will not be responsible if the Office fails to meet your expectations as to revenue or otherwise. The Office may be used only to operate a RE/MAX real estate service business, and may not be used to conduct another business or to generate revenue from any other activities, except with our prior written consent, which may be withheld in our sole and absolute discretion. You may only operate the Office for the purpose of providing Permitted Real Estate Service Activities (as defined below); the Office may not be used to conduct another business or to generate revenue from any other activities, except with our prior written consent, which we have the unfettered right to withhold.

(2) Permitted Real Estate Services.

"Permitted Real Estate Service Activities," for purposes of this Agreement, means activities directly related to the business of listing, offering, selling, exchanging and managing real property and the providing of marketing or consulting services or referrals or other activities with respect to auctioning, leasing or renting of real property or representing sellers, purchasers, lessors or renters of real property. Permitted Real Estate Service Activities expressly excludes all non-real estate related activity as well as the offering or performing of ancillary real estate services or activities, including without limitation, title insurance or searches, mortgage brokerage and mortgage origination, insurance or insurance related services or products, escrow or appraisal services and home inspection services. Subject to the restrictions set forth in Section 5.F, may perform these or other non-real estate related or ancillary services, and you may engage in businesses that offer such services, provided you:

a. Obtain RE/MAX Regional's prior written consent;

b. Do not use the distinguishing characteristics of the System or the RE/MAX Marks in any manner in connection with such non-real estate related or ancillary services or businesses or in connection with any other services or businesses that are not Permitted Real Estate Service Activities;

c. Properly segregate the operations of any such services or businesses from the operation of the Office as we deem appropriate; and

d. Are in full compliance with all applicable federal, state and local laws, ordinances and regulations.

(3) Term.

The term of the Franchise will begin on the Agreement Date and through October 15, 2019 (the "Term"), unless the Franchise is terminated earlier pursuant to the provisions of this Agreement. Termination or expiration of this Agreement will constitute termination or expiration of your Franchise and the Limited License to use the RE/MAX Marks conferred by Section 4 of this Agreement.

B. FULL TERM PERFORMANCE.

You specifically agree to operate the Office in accordance with the provisions of this Agreement, perform the obligations of this Agreement and continuously exert your best efforts to promote and enhance the business of the Office for the Term, including but not limited to your best efforts to execute the provisions of your Business Plan (as defined in Section 3 below) as approved by RE/MAX Regional in accordance with the provisions of this Agreement.

C. LOCATION OF OFFICE / NO TERRITORIAL RIGHTS.

The Franchise granted by this Agreement gives you the right to own and operate a single RE/MAX real estate office only at the Premises, which must be located within the geographic area described and illustrated in Exhibit A to this Agreement. You agree that you may open an Office at the Premises only if we approve the location of your Office in writing, and you may not relocate the Office without our prior written consent. Except as otherwise permitted by this Agreement, you agree that you will not operate or establish, or permit your Sales Associates (as defined in Section 6.N below) to operate or establish, any satellite office, branch office, kiosk or other extension of the Office from any other location whatsoever without our prior written consent. You further agree not to conduct, or permit anyone affiliated with the Office to conduct, any business or activity at the Premises other than the real estate service business authorized by this Agreement. You expressly acknowledge and agree that absolutely no proprietary or territorial rights or protections are afforded to you under this Agreement. You further expressly acknowledge and agree that, under the terms of the Agreement, we and/or RE/MAX, LLC may operate, or grant a franchise or license to operate, at any location whatsoever, including a location in close proximity to your Office, a RE/MAX office or other real estate brokerage office using any other trademark or service mark, even if such RE/MAX office or other office has an adverse impact on your business. You expressly waive any claims you may have that we and/or RE/MAX, LLC violated this Agreement, the implied covenant of good faith and fair dealing, or a law, statute, or regulation as a result of the location of your Office or of other RE/MAX (or other real estate brokerage) offices.

Although you are only granted the right to establish a single RE/MAX real estate office to be operated only at the Premises, neither you nor any other RE/MAX office is limited to listing, selling, or otherwise dealing with property or representing clients or customers within any defined geographic area except as otherwise provided by applicable licensing laws and regulations. However, as a RE/MAX affiliate and a user of the RE/MAX Marks under the Limited License set out in Section 4, you are expected to meet high standards of real estate service and professionalism reflective of the goodwill and respect enjoyed by the RE/MAX name and organization. These expectations may only be met by limiting your real estate services to

market areas where you can serve customers and clients directly and personally and where you have the greatest knowledge of local conditions, infrastructures, community history and the housing market. Accordingly, you agree to refer all requests for real estate services in areas in which you are unable to meet such requirements or elect not to provide service, to the RE/MAX office for that area, or if there is no RE/MAX office in that area, then to RE/MAX, LLC's Referral Department as provided in Subsection 8.H of this Agreement.

D. RESERVATION OF RIGHTS.

Nothing contained in this Agreement shall be deemed, expressly or by implication, to restrict in any way the right of RE/MAX Regional or RE/MAX, LLC or any of our or RE/MAX, LLC's affiliates, now or in the future, from engaging in any business activities whatsoever, without limitation as to location or channels of distribution; and from using the RE/MAX Marks and other proprietary rights in our or RE/MAX, LLC's other business activities without limitation; and from selling any products or services under the RE/MAX Marks, or under any other trademarks, service marks or trade dress, through other channels of distribution. You acknowledge that RE/MAX Regional and RE/MAX, LLC retain all rights to establish or acquire, or authorize others to establish or acquire, additional real estate brokerage office locations without regard to proximity to the Premises and that such market development is an integral part of the marketing concept underlying RE/MAX Regional's and RE/MAX, LLC's business. Nothing contained in this Agreement shall be deemed, expressly or by implication, to grant to you any type of exclusive or protected territory or any right to limit, control, or prevent RE/MAX Regional's or RE/MAX, LLC's right to own, operate, franchise, or license or in any other manner authorize the location and operation of real estate brokerage businesses at any location whatsoever. Moreover, nothing contained in this Agreement shall be deemed, expressly or by implication, to grant or extend to you a right of first refusal, option or any other right to purchase, acquire or open an additional RE/MAX franchise now or in the future.

Neither RE/MAX Regional nor RE/MAX, LLC shall be liable to you for any damages or loss of sales or profits (if any), based on actual or anticipated adverse consequences to you which may result from their continuing activities in the development of the System or other exercise of the rights reserved to them under this Agreement.

The term "affiliate" as used in this Subsection 2.D. shall mean any entity that directly or indirectly, in whole or in part, is controlled by or under common control with us, RE/MAX, LLC or any of our or RE/MAX, LLC's officers, managers, directors or shareholders.

E. RENEWAL OF FRANCHISE.

At the expiration of the Term, if agreeable to both you and us, your franchise relationship may be renewed for an additional five (5)-year period. Among the conditions to our agreeing to renew your franchise relationship are the following:

(1) You must have fully complied with all the terms and conditions of this Agreement throughout the Term;

(2) You must have exercised diligent efforts to develop your RE/MAX Franchise to its full potential during the Term, in a manner acceptable to us, including but

not limited to your efforts to execute the provisions of your Business Plan (as defined in Section 3 below) as approved by RE/MAX Regional in accordance with the provisions of this Agreement;

(3) You and your Owners must have executed a form authorizing RE/MAX Regional to obtain a consumer report and to conduct a credit and background check;

(4) You must have met our then current subjective and objective standards for new franchisees, including those relating to relevant experience, education and licensing, background and past record of compliance with laws, financial capacity, skills, integrity and other qualities of character, and shall have provided RE/MAX Regional with all such documentation that RE/MAX Regional may have requested to make such a determination, including but not limited to federal income tax returns and/or financial statements for your RE/MAX Franchise, for any other business whose funds may be commingled with those of your RE/MAX Franchise, and for any other business operated at the same location as that of your RE/MAX Franchise;

(5) You must have paid us a renewal fee equal to $25,000 (the "Renewal Fee");

(6) You must have given us written notice of your election to renew your franchise relationship not less than six (6) months or more than twelve (12) months prior to the end of the Term;

(7) If required by us, you or your Owner responsible for the Office must have completed, or must have agreed to complete, at your expense (including the cost of the course, and all travel, meal, lodging and entertainment expenses), RE/MAX 501: Maximizing Your Office Potential, and/or such other training we may deem necessary (or provide us with sufficient evidence that you or such Owner has satisfied requirements equivalent to such course or training);

(8) If required by us, you or your Owners must have attended all required meetings, seminars, conferences, sales rallies, and other events;

(9) You and your Owners must have executed the form of franchise agreement (including the appropriate renewal addendum and any additional supplemental agreements then being used by us) we are then customarily using in connection with the granting of franchises for RE/MAX offices, which agreement shall supersede this Agreement and may have materially different and less favorable from those appearing in this Agreement, including, without limitation, requirements to upgrade equipment and facilities, use new systems and procedures, pay higher fees, dues and advertising contributions and meet higher quotas; and

(10) You must have submitted for approval, and RE/MAX Regional must have approved, a new business plan for the prospective renewal term of your franchise relationship.

You must notify us in writing not less than six (6) months nor more than twelve (12) months prior to the end of the Term whether or not you intend to renew your franchise relationship with us. If you fail to provide us with notice of your intentions regarding renewal within such time period, we will deem your failure to notify us as your decision not to renew. In such case, you understand and agree that the Franchise shall expire at the end of the Term.

Subject to your compliance with all of the conditions for renewal of your franchise relationship and RE/MAX Regional's willingness to renew the franchise relationship, if you choose to renew your franchise relationship for an additional five (5)-year period no later than six (6) months prior to the expiration of the Term, the Renewal Fee will be reduced. In any event, if you elect to finance a portion of the Renewal Fee, the Renewal Fee will be increased.

Renewal of your franchise relationship will be conditioned on your and your Owners' continued compliance with all of the terms and conditions of this Agreement up to the date of expiration.

If, with our permission, you continue to operate the Office as a RE/MAX office after the end of the Term without proper renewal, you acknowledge and agree that the Term has expired and that you will be deemed to be operating on a month-to-month holdover basis under the terms and conditions of the franchise agreement and other agreements being used by us at the time of expiration of the Term, and from time-to-time thereafter, in connection with the granting of franchises for a RE/MAX office within the state in which the Office is located; provided, however, that your right to operate the Office under these circumstances may be terminated at any time and without cause by us, in our sole and absolute discretion, upon ten (10) days prior written notice to you. If you are operating on a month-to-month holdover basis, you may terminate the relationship only upon thirty (30) days prior written notice to RE/MAX Regional. In addition, if you are operating on a month-to-month holdover basis, you must pay us, on the first day of every month until the Franchise is either renewed or terminated, a prorated amount of the Renewal Fee equal to one-sixtieth (1/60) of such Renewal Fee. If you close the Office without providing RE/MAX Regional with the required written notice then, in addition to all fees, dues, charges and other amounts owed by you as of the date you close the Office, you will be required to pay RE/MAX Regional—as liquidated damages—an amount equal to the total of what you were billed for monthly fees under Section 6 of this Agreement as provided in this Section with respect to the prorated Renewal Fee, for the two (2)-month period immediately preceding the date that you closed the Office.

If the Franchise is not renewed and you are not operating the Franchise in accordance with the preceding paragraph, the conditions set forth in Section 14 of this Agreement shall apply.

3. OPENING AND EQUIPPING OF OFFICE.

You agree to cause the Office to be "opened" and operating in a manner reasonably acceptable to us within a period of 180 calendar days from the Agreement Date. You further agree that you will operate the Office continuously during the Term, and that you will not voluntarily abandon, surrender, transfer control of or lose the right to occupy the Premises or fail to actively operate the Office for a period in excess of five (5) consecutive days, unless your

failure to do so is caused by fire, flood, earthquake or other similar causes beyond your reasonable control, as more fully set forth in Section 15.AA.

"Opened" means having an office with a minimum of 1,000 square feet (a minimum of 800 square feet for a Location-Only Franchise in an area having a population of less than 5,000), staffed by a full-time secretary and equipped with furniture, an acceptable floor plan and appearance, a computer system, a phone system, a fax, a printer and other office equipment necessary to operate a RE/MAX Office in conformity with our high standards of quality and service. Unless prohibited by a state or local ordinance, or the landlord of the Premises, you must also have one or more exterior office signs depicting the trade name identified on the first page of this Agreement, and be compliant with the most current edition of the Trademark and Graphic Standards Manual in effect at the time you open the Office. You acknowledge and agree that you are responsible for assuring that the Office is constructed in compliance with all applicable laws, including, without limitation, Title III of the Americans with Disabilities Act, unless caused by fire, flood, earthquake or other cause beyond your control, as more fully set forth in Section 15.AA.

After the Agreement Date but prior to the opening of the Office, you must submit to us for approval a detailed five (5)-year business plan (as approved by RE/MAX Regional, the "Business Plan") for the development and operation of your business, including but not limited to a specific plan for the recruitment of Sales Associates to satisfy your Quota. You may not open the Office until RE/MAX Regional, in its sole and absolute discretion, has approved the Business Plan. If you have not submitted an approvable Business Plan prior to the opening of the Office, it will be deemed to be a failure of a material condition precedent, entitling us, upon thirty (30) days notice of default, to terminate this Agreement without refund of the Initial Franchise Fee. You acknowledge and agree that our approval of the Business Plan does not constitute an assurance, representation or warranty of any kind, express or implied, as to the potential profitability of your Office, and that RE/MAX Regional will not be responsible if the Office fails to meet your revenue or operational expectations.

To facilitate your reporting to us and RE/MAX, LLC and to meet other communication requirements, you agree to implement all systems, programs and procedures we or RE/MAX, LLC establish from time-to-time. Such systems, programs or procedures may include, but are not limited to, communication systems, accounting programs, data management systems and other systems designed to facilitate the flow of information relating to the System, the RE/MAX Network, or the business contemplated by this Agreement. Throughout the Term, you must maintain a computer system that has capabilities compatible with all communications and data reporting requirements of RE/MAX, LLC and you must have electronic mail capability, high speed Internet access (preferably T1 (full, fractional, or frame relay), DSL or cable), a printer, and a CD and DVD drive. You must participate in any intranet or extranet we or RE/MAX, LLC develops. Therefore, you must have computer hardware that meets certain minimum standards established by us or RE/MAX, LLC and use certain software as we or RE/MAX, LLC specify from time-to-time. You must also upgrade or update such hardware and software throughout the Term as we or RE/MAX, LLC specify. You are responsible for the cost of implementing such systems, programs or procedures, including the cost of purchasing or leasing computer hardware and software required by us or RE/MAX, LLC. RE/MAX Regional currently requires franchisees with more than five (5) Sales Associates affiliated with their Office to purchase and

use a brokerage back-office management software system ("brokerWolf") from Lone Wolf Technologies, Inc. Costs for this software will vary depending on the number of Sales Associates affiliated with your Office and the complexity of the software you purchase.

RE/MAX, LLC has developed RE/MAX University ("RU") as a way to deliver educational and motivational programming to RE/MAX Affiliates. With the exception of premium programming, such as accredited courses, RE/MAX University programming is available free of charge via the RE/MAX Mainstreet website, which you can access via a computer and some smart phones and mobile devices, or you can purchase a Pop Box or a Roku player, digital media players that will allow you to watch RE/MAX University programming on a television. Although you are not required to subscribe to RU at the present time, you may be required to do so in the future, in which case you may also be required to purchase a Pop Box, Roku player or other device or mechanism in order to receive the programming, as well as a television or other equipment, and pay RE/MAX, LLC a programming fee.

You may also be required to subscribe, and to ensure that each Sales Associate (as defined in Section 6.N) subscribes, to RE/MAX Mainstreet, a password protected Extranet site which serves as an electronic communication website for the exchange of important RE/MAX information. If you subscribe to RE/MAX Mainstreet, you, and each Sales Associate affiliated with your Office, will also be required to sign and abide by a RE/MAX Mainstreet Member Registration and Website User Agreement, which sets forth the terms and conditions relating to the use of RE/MAX Mainstreet. Neither you nor any Sales Associate affiliated with your Office may use RE/MAX Mainstreet to send unsolicited bulk electronic messages. You agree not to block or blacklist any remax.net message.

If at any time during the Term you choose to permit any of your Sales Associates to participate in a commission advance program with respect to commissions earned for Permitted Real Estate Service Activities, you will be required to offer exclusively, to provide the programs and services of, and to act as the servicer for, Quick Commission USA, LLC.

You will be required to implement any other specific systems, programs or procedures as we or RE/MAX, LLC may establish from time-to-time to enhance our communications with you. You agree that RE/MAX Regional or RE/MAX, LLC may require that certain goods, services, supplies, fixtures, equipment, inventory, and computer hardware and software relating to the Office's establishment or operation be purchased directly and/or exclusively from us or from other suppliers as we may designate from time-to-time.

4. LIMITED LICENSE TO USE RE/MAX MARKS.

A. OWNERSHIP AND GOODWILL AND LIMITED LICENSE.

Subject to all of the terms and conditions set forth herein, you are hereby granted a limited, non-exclusive license ("Limited License") to use the RE/MAX Marks, but only for the duration of this Agreement and only in connection with the operation of the Office and the Permitted Real Estate Service Activities specified in this Agreement (the "Licensed Use"). Your Limited License does not give you the right to sublicense or to transfer (apart from an approved transfer under Section 12) the RE/MAX Marks or to allow any third party to use your Office

trade, fictitious or assumed name for any purpose whatsoever. You agree that if this Agreement is terminated, expires, is transferred without our consent or approval, or is for any reason declared void or of no force or effect, this Limited License shall automatically terminate. You further agree that in the event of such a termination of this Limited License you will immediately cease all use of the RE/MAX Marks and promptly comply with all post-termination requirements of Section 14 of this Agreement.

(1) "RE/MAX" Required in d/b/a but Prohibited in Entity Name.

You are required to use the term "RE/MAX" as the first word in the trade identification of the Office, and you must obtain any trade, fictitious or assumed name registrations as may be required under applicable law for, and to operate the Office only under, such trade, fictitious or assumed name. You agree not to use the term "RE/MAX" or any of the other RE/MAX Marks (or any variations or renditions similar to any of the RE/MAX Marks) in, or as part of, your formal corporate or legal name.

(2) Ownership of RE/MAX Marks and Goodwill.

You acknowledge and agree that: i) RE/MAX, LLC is the exclusive owner of the RE/MAX Marks and that such marks are invaluable assets of RE/MAX, LLC; ii) your license to use the RE/MAX Marks is derived solely from this Agreement and is limited to the Licensed Use that is otherwise in compliance with this Agreement; and iii) all use of the RE/MAX Marks, and any goodwill established by such use, including, without limitation, the use of the trade, assumed or fictitious name you adopt for your Office that includes the term "RE/MAX," will inure exclusively to the benefit of RE/MAX, LLC, and that the same will automatically vest in and remain the exclusive property of RE/MAX, LLC. You further acknowledge and agree that under this Agreement you shall not acquire any right, ownership or other interests in or to: i) the RE/MAX Marks, other than the Limited License granted herein, or ii) the goodwill associated with the RE/MAX Marks.

(3) High Standards of Service and Professionalism Required.

You acknowledge and agree that the RE/MAX Marks embody and represent the goodwill of the RE/MAX organization, and identify the RE/MAX network as the source of the highest standards of quality real estate services and agent professionalism. You agree to assure that the Permitted Real Estate Service Activities provided by you, and by all Sales Associates affiliated with your Office, adhere to such high standards in regards to all Permitted Real Estate Service Activities offered or provided under the RE/MAX Marks and in the name of your Office. In this regard, you also agree to assure that all uses of the RE/MAX Marks are strictly in accordance with all applicable standards, operating procedures, policies and guidelines that we or RE/MAX, LLC prescribe—and from time-to-time amend—during the duration of this Agreement, including, without limitation, those set forth in the most current edition of RE/MAX Brand Identity: Trademark and Graphic Standards, or its successor (the "Trademark Manual") and other publications, if any, dedicated to proper use of the RE/MAX Marks. Finally, you agree to comply with, and assure that all of your Sales Associates comply with, the business image and

operating standards set forth in Section 8 of this Agreement. You understand and acknowledge that such business image and operating standards have been established to protect the goodwill of the RE/MAX Organization, as embodied by the RE/MAX Marks, but do not, and are not intended to, govern the day-to-day operations of your Office.

(4) Sales Associates Not Licensed to Use RE/MAX Marks.

You acknowledge and agree that no one employed by your Office in any capacity or affiliated with your Office as a Sales Associate has or will be granted by you any direct or independent right or license to use the RE/MAX Marks, but rather that their use of the RE/MAX Marks comes under and is subject to this Limited License. You agree to ensure that you and everyone employed by or affiliated with your Office who uses the RE/MAX Marks under this Limited License, does so only in the name of your Office, in furtherance of the Permitted Real Estate Service Activities provided out of your Office, in a manner that is consistent with all applicable limitations, including without limitation, those set forth below.

(5) Extension of Limited License to Other/Future Marks.

All provisions of this Agreement applicable to the RE/MAX Marks will apply to any additional trademarks, service marks, commercial symbols, designs, art work and logos that RE/MAX, LLC may in the future authorize you to use.

B. SPECIFIC LIMITATIONS ON LICENSE TO USE RE/MAX MARKS.

Your Limited License to use the RE/MAX Marks is subject to various limitations that are designed to protect the marks themselves, the goodwill they reflect and the reputation of the RE/MAX Network. In addition to those set forth in the Trademark Manual, your use of the RE/MAX Marks must conform to the following requirements and limitations.

(1) Use Office Address – Identity of Office, Address and Contact Information Required with RE/MAX Marks.

You agree that all uses of the RE/MAX Marks in all advertising of your services in any medium whatsoever, including but not limited to print, electronic media, and Internet websites, will be accompanied by your Office name, Office address, phone number and prominently indicate that "Each RE/MAX Office is Independently Owned and Operated," and to assure that your Sales Associates also accompany their uses of the RE/MAX Marks with such information and meet all other requirements of the Trademark Manual in their advertising and personal promotion efforts. More specifically, you agree not to use, and not to permit your Sales Associates to use, the RE/MAX Marks (a) in any manner that may mislead or deceive consumers regarding your Office location, the scope of the geographic area your Office serves or your relationship to us or RE/MAX, LLC; or (b) other than for the promotion of the Permitted Real Estate Service Activities provided by your Office. You agree to refrain from sharing or linking any website in connection with which your Office name or the RE/MAX Marks are used with or to any website of a competitor of the RE/MAX Network or from promoting the name, image or business of

any licensed real estate agent who is not a RE/MAX Affiliate.

(2) No Service Area Misrepresentations or Competing Services.

While you are not limited in the reach of your advertising to attract consumers to your Office for Permitted Real Estate Service Activities involving the properties in the local market areas your Office serves, you are not permitted to use the RE/MAX Marks in connection with competing or other businesses as described below or to hold yourself out: i) as having the capacity to serve the real estate needs of consumers in distant market areas where neither you nor any of your Sales Associates can personally and directly provide quality, competent services, such as on a state-wide, multi-state, national or international scale; or ii) as a state-wide, multi-state, national or international provider of agent or office locator services or information; or iii) as an operator, developer, owner, promoter or provider of consumer-to-agent or agent-to-agent referral services. The foregoing limitations shall not be interpreted or asserted to limit or inhibit in any way your ability to refer current or past clients and customers from within the market areas you or your Office serve, or friends and family members, to other RE/MAX affiliates, irrespective of where those other RE/MAX affiliates or their offices may be located and to condition such referrals on the payment of a referral fee.

a. Local Markets Served Personally and Directly.

Consistent with the foregoing, you agree to insure that neither you nor your Office nor any of your Sales Associates engage in any advertising, or permit use of your Office name in directories or in any other manner, that offers, or infers the availability by or through your Office of, real estate services in a geographic area or market that is not served personally and directly by you or one of your Sales Associates or where your Office lacks the local market knowledge and familiarity necessary to provide informed, competent, high quality real estate services or that is too distant from your Office for you or any Sales Associate affiliated with your Office to personally and directly serve and satisfy the real estate service needs of buyers, sellers or renters.

b. No Office/Agent Locator Services or Private Referral Networks.

Your Limited License does not authorize you to use, and you agree not to use, or to permit any Sales Associate to use, the RE/MAX Marks in connection with the offering, providing, performance, sale, endorsement or promotion of any other services, products or businesses or in any other manner we have not expressly authorized in writing. Consistent with your Limited License, neither you nor any of your Sales Associates are permitted to engage in the offering of or participate in the offering of RE/MAX Office/Agent Locator Services or Private Referral Network Services or any other prohibited service or activity described in the Trademark Manual as from time-to-time amended. In addition, you agree not to engage in any other business or activity that does not conform to the high standards of the RE/MAX organization or that competes with or undermines free

services offered consumers or the RE/MAX Network by RE/MAX Regional or RE/MAX, LLC.

(3) Style of Use, Relative Prominence in d/b/a.

You agree to use and display the RE/MAX Marks in the style and graphic manner illustrated in the Trademark Manual, and to use, along with the RE/MAX Marks, notices of federal trademark and service mark registrations in the manner specified in the Trademark Manual. You further agree not to use any RE/MAX Mark with any prefix, suffix, or other modifying words, terms, designs, or symbols, or in any other modified form. In regards to the name of your Office, you agree to use substantially the same size for the term "RE/MAX" as you use for the balance of your trade, assumed or fictitious name, and in particular, that the balance of the name will not be less than fifty percent (50%) nor more than one hundred percent (100%) the height of RE/MAX. You are not permitted in business listings, directories or in referral services where your Office name may be displayed, to exaggerate, enlarge, color or stylize the "RE/MAX" portion of your Office name so as to obscure, dominate or weaken the balance of that name or to otherwise create a presentation that may mislead or deceive consumers to believe they are not dealing with a local real estate service business.

(4) No Use of RE/MAX Marks by Vendors, Directories, Referral Services, Other Licenses.

You are not permitted to allow any vendor, service provider or other third party to stylize or otherwise engage in any uses of your Office name of the type described above or in any other manner that may suggest they are sponsored or endorsed by, or affiliated with, the RE/MAX Network. In this regard, you acknowledge and agree that your Limited License to use the RE/MAX Marks does not permit you to allow: (i) any vendor or other third parties to use any of the RE/MAX Marks or your Office name in connection with any vendor's or third party's product or service or in any movie or video or theatrical or musical production or the like, or (ii) any telephone directory or other directory to show the "RE/MAX" portion of your Office name in an emphasized, exaggerated, enlarged or stylized or any other format that does not give substantially the same prominence to the balance of your trade, fictitious or assumed Office name. Lastly, you will not authorize or permit real estate licensees who are not registered or licensed as Sales Associates with your Office to appear with or be listed under your name, your Office name, the name of any Sales Associate or of any "Team" known to be associated with your Office or under any of the RE/MAX Marks or to otherwise use or benefit from the use of any of the RE/MAX Marks.

(5) Ownership and Control Over Use of Office Phone Numbers.

You agree that all telephone numbers you use for the Office shall be used solely in connection with the Permitted Real Estate Service Activities authorized by this Agreement to be provided out of your Office. You acknowledge that some or all of the telephone numbers will appear under the name RE/MAX, in conjunction with the self-standing name of your Office (the d/b/a of your Office), in directory listings, in yellow

pages display advertising and in other forms of advertising. Neither you nor any of your Sales Associates may publish any telephone advertisement or secure or list any telephone number that could confuse other real estate professionals, the industry or the public about the ownership, operation, location of, or geographic areas or markets served by, your Office or any other RE/MAX office.

(6) Post-Termination Assignment and Redirection of Calls. Authority to Direct Phone Company.

Upon termination or expiration of this Agreement, you agree to promptly assign all of the telephone numbers listed for the Office to us or to our designee, with no forwarding message or other information that would steer callers from us or our designee, and to instruct the telephone company in writing to redirect all calls thereafter going to such numbers to RE/MAX Regional or otherwise in accordance with our directions. You agree that any telephone company and all directory listing agencies may accept your signature on this Agreement as conclusive evidence of the rights of RE/MAX Regional to ownership, control and benefit of such telephone numbers as an integral and distinguishing characteristic of the RE/MAX System and goodwill. You hereby direct each such telephone company or directory listing agency to accept your signature on this Agreement as your signed authorization and direction to them to assign, and re-direct calls to such phone numbers to us or our designee as described above, and to discontinue or modify at next printing of the yellow pages, all listings and display ads that reference the Office and include such phone numbers, as directed by us or RE/MAX, LLC.

(7) Creation, Ownership and Responsibility for RE/MAX Formative Domain Names.

You are hereby authorized to register and use one or more Internet domain names that include the term "remax" ("RE/MAX Formative Domain Names") for so long as the rules for using the RE/MAX Marks in domain names set forth in the Trademark Manual, as updated from time to time, allow such registrations and provided that each such domain name complies strictly with those rules and in any other guidelines RE/MAX, LLC issues on RE/MAX Formative Domain Names. You are not authorized and agree not to register any RE/MAX Formative Domain Name that is not allowed by and strictly compliant with those rules. You agree and acknowledge that neither you nor anyone affiliated with your Office will have any legitimate interest in registering or owning any RE/MAX Formative Domain Name that does not comply strictly with those rules, or retaining ownership of any RE/MAX Formative Domain Names after the transfer, expiration, or termination of this Agreement and that registering or owning any RE/MAX Formative Domain Name that does not comply strictly with those rules, or retaining ownership of any RE/MAX Formative Domain Name after transfer, expiration, or termination of this Agreement would be an act of bad faith. You acknowledge and understand that Sales Associates are not authorized to register RE/MAX Formative Domain Names.

a. Franchisee Cooperates and Bears Costs to Recover RE/MAX Formative Domain Names.

Upon request from us or RE/MAX, LLC, you agree to deactivate, redirect, assign, transfer, terminate and/or disconnect any non-compliant or abandoned RE/MAX Formative Domain Name that was registered by you, the Office, any of your Sales Associates or anyone else currently or formerly employed by or affiliated with your Office, or any entity commissioned to register such domain name by you, the Office, your Sales Associates or anyone else currently or formerly employed by or affiliated with your Office: (i) that does not comply with the form and guidelines specified by RE/MAX, LLC; or (ii) that is owned by any Sales Associate affiliated with you at any time and is not assigned to you upon the termination or non-renewal of the independent contractor agreement of such Sales Associate; or (iii) that is abandoned without renewal of its registration by you or any Sales Associate.

b. Other Formats for Internet Addresses.

RE/MAX, LLC may require that various other types of marketing or advertising on the Internet involving the RE/MAX Marks or the name of your Office also utilize a specific template or format and if it does, you agree to follow that template or format.

c. Further Actions to Transfer Domains or Internet Addresses.

You and your Owners further agree that you will, at your own expense, promptly execute and deliver all necessary documents and take any action reasonably requested by us or RE/MAX, LLC necessary to effect the assignment and transfer of domain names or Internet addresses required to be deactivated, redirected, assigned, transferred, terminated and/or disconnected pursuant to paragraph 4.B.(7)c. or 14.B.7, including compliance with any procedure for the transfer of domain names established by the domain name registrar or entity that issues the address. You agree to direct all Internet service providers, domain name registrars and domain name listing agencies and other third parties to accept this Agreement as conclusive of the rights of RE/MAX Regional to ownership, control and benefit of all RE/MAX Formative Domain Names and Internet addresses you or your Sales Associates create. You and your Owners further hereby appoint us as your agent and attorney-in-fact to act for and on your behalf to execute, register, and file such documents, complete such processes, and to perform all other lawfully permitted acts as the registrar, or any applicable law, requires to effectuate a transfer of such domain names or Internet addresses with the same legal force and effect as if executed by you or your Owners. You agree to pay directly, or reimburse us and RE/MAX, LLC for, any and all costs and attorney fees we and RE/MAX, LLC incur in the process of obtaining and/or deactivating (in RE/MAX, LLC's sole discretion) any such domain name or Internet Address.

EXHIBIT A

(8) Electronic Links to RE/MAX Regional or RE/MAX, LLC Websites May Be Required.

If required by RE/MAX Regional or RE/MAX, LLC, you shall establish your website(s) as part of our or RE/MAX, LLC's website(s), and/or establish electronic links to our or RE/MAX, LLC's website(s).

(9) Ownership and Use of Hot Air Balloons.

You acknowledge and agree that RE/MAX hot air balloons, which are intended to be used to maximize public awareness and recognition of the RE/MAX name and to promote and enhance public goodwill reflected in the RE/MAX Marks, must always remain under the control and ownership of RE/MAX Regional, RE/MAX, LLC or a duly appointed designee of either. You understand that RE/MAX Regional or one of its designees will exercise reasonable efforts to make a RE/MAX hot air balloon available to you for a reasonable fee should you desire to use one for promotional purposes. You agree that none of you, your Owners or your Sales Associates will purchase or own, for any purpose, a RE/MAX hot air balloon or any hot air balloon depicting a red-over-white-over-blue trade dress, or that otherwise depicts, or is confusingly similar to, any of the RE/MAX Marks.

(10) Franchisee Supervision Required to Assure Compliance.

You agree to be responsible for, and to supervise, your Sales Associates in order to ensure the proper use of the RE/MAX Marks and their full compliance with the provisions of this Section 4 and the Trademark Manual as it may be amended from time-to-time. You acknowledge and agree that if you make, or anyone employed by or affiliated with your Office makes, any improper or unauthorized use of the RE/MAX Marks, it will constitute an infringement of RE/MAX, LLC's exclusive rights in and to the RE/MAX Marks and a default of this Section 4 of this Agreement. A default under the provisions of this Section 4 by you or by anyone employed by or affiliated with your Office shall be deemed a material default of an essential condition of this Agreement that, in addition to other recourses available to RE/MAX Regional or RE/MAX, LLC, will give rise to the termination provisions of Section 13.

(11) RE/MAX, LLC is "Third Party Beneficiary" under RE/MAX Marks Provisions.

You acknowledge and agree that RE/MAX, LLC is a third party beneficiary of Section 4 of this Agreement and of every other Section of this Agreement that deals with use of the RE/MAX Marks and/or the RE/MAX System.

C. NOTIFICATION OF INFRINGEMENTS AND CLAIMS.

You agree to immediately notify us in writing of any apparent infringement of or challenge to any of RE/MAX, LLC's copyrights or any of the RE/MAX Marks, or of any claim by any person of any rights in such copyrights, RE/MAX Marks or similar trade names, trade-

marks or service marks of which you become aware. You agree not to communicate with anyone except us, RE/MAX, LLC and our respective counsel in connection with any such infringement, challenge or claim and agree that RE/MAX, LLC will have the sole right to determine whether any infringement, challenge or claim exists, and if so, to control exclusively any litigation or other proceeding arising out of any such infringement, challenge or claim. You agree to cooperate with and assist RE/MAX, LLC with the initial and any follow up investigation of the alleged infringement of or challenge to RE/MAX, LLC's copyrights or Marks. You agree to sign any documents, render any assistance, and do any acts that RE/MAX, LLC, in its sole discretion, believes are necessary or advisable in order to protect, maintain or perfect RE/MAX, LLC's interests in any litigation or proceeding related to such copyrights or the RE/MAX Marks or to otherwise protect or maintain RE/MAX, LLC's interests in such copyrights or the RE/MAX Marks. You acknowledge and understand that RE/MAX, LLC will have no obligation to defend the RE/MAX Marks from valid claims of prior use or of lawful concurrent use by others.

D. DISCONTINUANCE OF USE OF MARKS.

If it becomes advisable at any time in RE/MAX, LLC's sole judgment for the Office to modify or discontinue the use of any RE/MAX Mark or for the Office to use one or more additional or substitute trademarks or service marks, including the RE/MAX Mark used as part of the trade, fictitious or assumed name of the Office or in a Domain Name, you agree, at your expense, to comply with our directions to modify or otherwise discontinue the use of the RE/MAX Mark, or use one or more additional or substitute trademarks or service marks, within a reasonable time after our notice to you.

5. RELATIONSHIP OF THE PARTIES; INDEMNIFICATION.

A. INDEPENDENT CONTRACTOR; NO FIDUCIARY RELATIONSHIP.

Both of us understand and agree that this Agreement does not create a fiduciary relationship between us, that you are an independent contractor, and that nothing in this Agreement is intended to make either party a general or special agent, joint venturer, partner or employee of the other for any purpose whatsoever. All employees or agents hired or engaged by or working for you shall be your employees or agents only, and shall not for any purpose be deemed employees or agents of ours or RE/MAX, LLC nor subject to our or RE/MAX, LLC's control. However, you agree that we have the right, and that you must permit us, to communicate directly with your Sales Associates concerning any matter that we deem necessary or appropriate relating to the System or your Office, without incurring any liability to you. You agree to conspicuously identify yourself in all your dealings with clients, customers, suppliers, public officials, Office personnel and others as the owner of the Office pursuant to a Franchise Agreement with us. You shall place, and you shall ensure that everyone affiliated with the Office places, a statement on all forms, business cards, stationery, advertising and other materials that "Each RE/MAX Office is Independently Owned and Operated" or such other statement as we may require from time-to-time. Such a statement must also be displayed in a prominent place near the main entrance to the Office and in the reception area. You further understand and agree that you are not a third party beneficiary of any other franchise agreement and have no independent right to enforce the terms of, or require performance under, any other franchise agreement.

EXHIBIT A

B. CONDUCT OF BUSINESS OF THE OFFICE.

(1) You Control the Conduct of Your Business and the Office.

You understand and agree that neither we nor RE/MAX, LLC shall have any authority to exercise control over the day-to-day conduct of your business and the Office, including but not limited to the time and manner in which you obtain listings and sell properties, the commission rates charged by the Office, commission splits negotiated between you and your Sales Associates, security and safety issues associated with the design and conduct of the Office, the details of the work performed by you or your employees and agents, the hiring or termination of your employees and agents, the compensation, working hours or conditions or the day-to-day activities of such persons except to the extent necessary to protect the RE/MAX Marks and the System and the goodwill associated with the RE/MAX Marks and the System. All activity within the Office, including those described above, will be determined by you in your own judgment, subject only to the laws and regulations of the state in which the Office is located, the terms of this Agreement, and the standards, procedures, policies and guidelines prescribed by RE/MAX, LLC or us for the preservation of the goodwill associated with the RE/MAX Marks. You acknowledge and understand that such procedures, policies and guidelines are not fixed, and may, from time-to-time, be modified or revised by RE/MAX, LLC or us to reflect existing conditions in the highly competitive real estate services marketplace.

(2) Model ICA/Essential ICA Provisions.

For your convenience, RE/MAX, LLC has developed a model independent contractor agreement ("ICA") for you to consider using as a framework for an independent contractor relationship with your Sales Associates. While you are not required to use the ICA developed by RE/MAX, LLC, it does contain certain essential provisions ("Essential ICA Provisions"). The Essential ICA Provisions do not pertain to or govern the day-to-day operation, management or activity of the Office, which is entirely determined by you in your own judgment; rather, the Essential ICA Provisions are designed in large measure to help preserve and protect the valuable RE/MAX Marks and the good will associated with the RE/MAX Marks. RE/MAX, LLC's model ICA also includes other common or important provisions that are generally regarded as significant, if not necessary, in ICAs.

Although the form of agreement you use is up to you, you are required to have in place a fully executed and in force written ICA with each of your Sales Associates that includes the Essential ICA Provisions. The current Essential ICA Provisions are set out in Exhibit D attached hereto and you shall cause these Essential ICA Provisions to be incorporated into each and every ICA you enter into or renew with your Sales Associates. As future changes, additions or modifications to the Essential ICA Provisions are promulgated by RE/MAX, LLC, you will have sixty (60) days within which to amend your ICA form to include the new Essential ICA Provisions. You then shall use that amended, compliant ICA form, or some alternative compliant ICA form, for all of your new and renewal ICAs so that at the end of the twelve (12)-month period following the amendment of your ICA, all of your Sales Associates will be parties to an ICA containing the most current Essential ICA Provisions.

EXHIBIT A

C. **NO LIABILITY, NO WARRANTIES.**

We have not authorized or empowered you to use the RE/MAX Marks except as provided by this Agreement and you agree not to employ any of the RE/MAX Marks in signing any contract, check, purchase agreement, negotiable instrument or legal obligation, application for any license or permit, or in a manner that may result in demands for payment or assertions of liability directed to us for any indebtedness or obligation of yours. Except as expressly authorized by this Agreement, neither of us will make any express or implied agreements, warranties, guarantees or representations, or incur any debt, in the name of or on behalf of the other or represent that the relationship between us is other than that of franchisor and franchisee. You acknowledge that you do not have the authority to bind or obligate RE/MAX Regional or RE/MAX, LLC in any way by any promise or representation, or any other action or inaction.

D. **INDEMNIFICATION.**

You shall be solely and exclusively responsible for any fines, taxes, costs, expenses, damages, loss or liability, of any kind or nature, arising out of any suits, actions, proceedings or claims (collectively, "Claims") relating to your business or the operation of the Office, even if such Claims are brought or filed after transfer, termination, or expiration of this Agreement, and even if such Claims are based on our or RE/MAX, LLC's negligence. You agree to indemnify, defend and hold us and RE/MAX, LLC, and each of our and their present and former affiliated entities, shareholders, directors, officers, managers, partners, employees, lawyers, agents, representatives, affiliates and assignees, harmless from and against, and to reimburse us and them for, all such fines, taxes, costs, expenses, damages, loss or liability for which we or they are held liable or which we or they reasonably incur in connection with any Claims, including, without limitation, actual, direct and indirect consequential damages, reasonable attorneys', accountants' and expert witness fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses. RE/MAX Regional and RE/MAX, LLC have the right to defend any Claims and in connection therewith, to retain legal counsel of our or their choice. You agree to cooperate with us and RE/MAX, LLC in the defense of, and not to settle or compromise, without our prior written consent, any Claims to which we or RE/MAX, LLC are a party or which may affect our interests or the interests of RE/MAX, LLC. Your indemnification obligations described above will continue in full force and effect after, and notwithstanding, the transfer, expiration, or termination of this Agreement.

E. **CONFIDENTIAL INFORMATION.**

You acknowledge that you have been given access to and will be informed regarding confidential matters, trade secrets, recruiting techniques, accounting procedures, quality control procedures and other methods developed by RE/MAX, LLC as part of the System which, for purposes of this Agreement, are owned by RE/MAX, LLC and which are necessary and essential to the operation of the Franchise, without which you could not efficiently, effectively and profitably operate the same (collectively, the "Confidential Information"). You further acknowledge that the Confidential Information was unknown to you prior to negotiation for and execution of this Agreement, and that the unique and novel combination of "know how" and methods developed by RE/MAX, LLC and licensed to you by us for the operation of the Office are peculiar to the real estate business conducted by RE/MAX offices. You agree to use

Confidential Information only in connection with the real estate service business authorized by this Agreement. You further agree to take all steps necessary, at your own expense, to protect the Confidential Information, and shall not divulge any of the Confidential Information to any other person either during the Term or subsequent to the termination or expiration of this Agreement without our prior written consent.

F. EXCLUSIVE RELATIONSHIP/NON-COMPETITION AGREEMENT.

You acknowledge and agree that we would be unable to protect the Confidential Information against unauthorized use or disclosure and would be unable to encourage a free exchange of ideas and information between and among RE/MAX offices, us, RE/MAX, LLC and RE/MAX Affiliates if you or your Owners or any immediate family member (as defined below) were permitted to engage in other businesses competitive with RE/MAX offices or with us or RE/MAX, LLC. Accordingly, you agree that without our prior written consent, which we have the unfettered right to withhold, none of you, nor if you are an entity, your Owners, or your Sales Associates (including, but not limited to, your manager or designated or managing broker of record), or the immediate family members (as defined below), of any of you or them will, during the Term, directly or indirectly, as an officer, director, shareholder, partner, manager, employee, agent, consultant, independent contractor or otherwise, operate, manage, own, have an interest in or become affiliated with in any other way (1) any non RE/MAX real estate service business; or (2) any other business or enterprise offering products or services that directly or indirectly compete with the products and services offered by RE/MAX offices, RE/MAX Regional or RE/MAX, LLC, or any of our or RE/MAX, LLC's affiliates. For purposes of this Agreement, an "immediate family member" shall include a spouse, a "significant other" or a "domestic partner" with whom you reside, as well as your parents, step-parents, in-laws, siblings, children and step-children and each of their immediate family members.

You agree that RE/MAX, LLC's and our consent to your entering into or continuing other businesses prohibited by this Section 5.F may be contingent upon the amendment of this Agreement and/or the immediate or future acquisition from us of a franchise covering such business. You also agree to fully support the natural expansion by us and RE/MAX, LLC into related service businesses including, without limitation, mortgage, insurance, property management and relocation.

6. FEES.

A. INITIAL FRANCHISE FEE.

You agree to pay us an initial franchise fee (the "Initial Franchise Fee") in the amount of $_____ when you sign this Agreement. You will not be entitled to any rights or privileges under this Agreement until the Initial Franchise Fee is paid as agreed. You agree that we have fully earned the Initial Franchise Fee and that it becomes non-refundable upon payment to us.

B. MANAGEMENT FEE.

You agree to pay us a monthly management fee (the "Management Fee") equal to the amount specified in Exhibit B attached hereto, multiplied by the number of Sales Associates

under contract with you, or performing real estate related services for you, during any part of the preceding calendar month, including each broker of record and Manager, if any. The Management Fee may be increased annually in accordance with Exhibit B. The Management Fee is due and will be considered late if not received by us on the fifth day of each month throughout the Term of this Agreement commencing on the fifth (5th) day of the month after the month the Office opens and by the fifth (5th) day of the month following the expiration or termination of this Agreement. You, in turn, should charge each of your Sales Associates a monthly management fee. We currently recommend, but do not require, that the monthly management fee you charge be $600 per month. You understand and acknowledge that we may, from time-to-time, suggest an increase or decrease in the recommended management fee that you collect from Sales Associates. You also understand and acknowledge that your failure to establish or require your Sales Associates to pay a monthly Management Fee, or your failure to actually collect the monthly Management Fee from some or all Sales Associates, does not relieve you of your obligation to remit the Management Fee payable to us under this Agreement in a timely manner.

C. **PROMOTION FEE.**

You agree to pay us a monthly promotion fee (the "Promotion Fee") equal to the amount specified in Exhibit B attached hereto, multiplied by the same number of persons for which a Management Fee is payable pursuant to Section 6.B above. You also agree to pay us any special levy as may from time-to-time be required for special promotional campaigns. The cost of any special promotional campaign, if instituted, will be shared by RE/MAX franchisees to the extent determined by us. The Promotion Fee is used to promote the System in such manner as we may determine from time-to-time in our discretion, and may be increased annually in accordance with Exhibit B. As described in RE/MAX Regional's Franchise Disclosure Document, we send a portion of the Promotion Fee to RE/MAX, LLC for payment of the RE/MAX, LLC National Brand Marketing Alliance ("NBMA") fee, to be used for (i) purchases of national media advertising and promotion on network and cable television, in national magazines and newspapers, on the Internet, and in other media forms targeted to the U.S. population as a whole; (ii) the creation and development of advertising and media materials, and for public relations purposes; (iii) special, high profile advertising opportunities; and (iv) technology related services (which include, without limitation, expenses related to the development, operation, and maintenance of the remax.com website, LeadStreet (the lead management solution included as part of the remax.net intranet) and the RE/MAX Design Center). The Promotion Fee is administered by RE/MAX of Indiana Promotions, Inc. dba RE/MAX INTEGRA Promotions, Midwest. The Promotion Fee is due and will be considered late if not received by us on the fifth (5th) day of each month throughout the Term of this Agreement commencing on the fifth (5th) day of the month after the month the Office opens and by the fifth (5th) day of the month following the expiration or termination of this Agreement. You understand and acknowledge that your failure to establish or require your Sales Associates to pay a monthly Promotion Fee, or your failure to collect a monthly Promotion Fee from some or all Sales Associates, does not relieve you of your obligation to remit the Promotion Fee payable to us under this Agreement in a timely manner.

Such funds, and any interest or other income earned on such funds, become the non-refundable property of RE/MAX INTEGRA Promotions, Midwest, will be accounted for

separately from our other funds and will be used exclusively for institutional advertising for the benefit of those RE/MAX offices operating within our region. A portion of the Promotion Fees will be used to pay salaries of employees of RE/MAX INTEGRA Promotions, Midwest and other administrative expenses reasonably related to the direction and implementation of our advertising purposes. None of RE/MAX Regional, RE/MAX, LLC, or RE/MAX INTEGRA Promotions, Midwest guarantees or provides any assurance that you will benefit directly from the expenditure of the Promotion Fees or that you will benefit to the same degree as other RE/MAX franchisees.

D. TRANSACTION FEE.

You agree to pay us a monthly transaction fee (the "Transaction Fee") equal to one percent (1%) of the gross monthly real estate commissions earned by all of your Sales Associates, including each broker of record and Manager, if any. The Transaction Fee is due and will be considered late if not received by us on the fifth (5th) day of each month throughout the Term of this Agreement commencing on the fifth (5th) day of the month after the month the Office opens and by the fifth (5th) day of the month following expiration or termination of this Agreement. You, in turn, should charge each of your Sales Associates a monthly transaction fee. We currently recommend, but do not require, that the transaction fee you collect from each Sales Associate equal five percent (5%) of the gross monthly real estate commissions earned by such Sales Associate. You understand and acknowledge that we may, from time-to-time, suggest an increase or decrease in the recommended transaction fee that you collect from Sales Associates. You also understand and acknowledge that your failure to establish or require your Sales Associates to pay a monthly Transaction Fee, or your failure to collect a monthly Transaction Fee from some or all Sales Associates, does not relieve you of your obligation to remit the Transaction Fee payable to us under this Agreement in a timely manner. For the purpose of this paragraph, "gross monthly real estate commissions" means all revenue, and any other payments, however characterized, generated relating to the Permitted Real Estate Service Activities conducted by you and all of the Sales Associates in your Office, including but not limited to referral commissions and fees.

E. HOT AIR BALLOON FUND FEE.

You agree to pay us a monthly Hot Air Balloon Fund Fee equal to $175.00 to cover the costs of the operation of RE/MAX hot air balloons for public relations and promotional programs. The Hot Air Balloon Fund Fee is due and will be considered late if not received by us on the fifth (5th) day of each month throughout the Term of this Agreement commencing on the fifth (5th) day of the month after the month the Office opens. RE/MAX INTEGRA Promotions, Midwest is responsible for arranging for the operation of RE/MAX hot air balloons. The Hot Air Balloon Fund Fee is used to promote the System in such manner as we may determine from time-to-time in our discretion. Such funds, and any interest or other income earned on such funds, are non-refundable, will be accounted for separately from our other funds and will be used exclusively for promoting the System for the benefit of those RE/MAX offices operating within our region. However, none of RE/MAX Regional, RE/MAX, LLC or RE/MAX INTEGRA Promotions, Midwest guarantees or provides any assurance that you will benefit directly from the expenditure of the Hot Air Balloon Fund Fees or that you will benefit to the same degree as other RE/MAX franchisees.

EXHIBIT A

F. **REGIONAL DEVELOPMENT FUND FEE.**

You agree to pay us a monthly Regional Development Fund Fee equal to $200.00 to cover various costs we incur in connection with various promotional, marketing, recruiting and other activities we undertake. The Regional Development Fund Fee is due and will be considered late if not received by us on the fifth day of each month throughout the Term of this Agreement commencing on the fifth day of the month after the month the Office opens. The Regional Development Fund Fee is used to promote the System in such manner as we may determine from time-to-time in our discretion. Such funds, and any interest or other income earned on such funds, are non-refundable, will be accounted for separately from our other funds and will be used exclusively for promoting the System for the benefit of those RE/MAX offices operating within our region. However, none of RE/MAX Regional, RE/MAX, LLC or RE/MAX INTEGRA Promotions, Midwest guarantees or provides any assurance that you will benefit directly from the expenditure of the Regional Development Fund Fees or that you will benefit to the same degree as other RE/MAX franchisees.

G. **ANNUAL DUES.**

You agree to pay RE/MAX, LLC annual dues ("Annual Dues") in the amount of $390 (or such increased amount as provided below) for each Sales Associate (as defined in Subsection 6.N below). Such dues will be payable by you for each Sales Associate as follows: (a) you must forward the first payment to RE/MAX, LLC, along with the membership profile form, within five (5) days of the date such Sales Associate's license is first registered with the Office or the date the new Sales Associate is first qualified to engage in real estate services for the Office, whichever is earlier; and (b) all subsequent payments shall be due to RE/MAX, LLC on or before each anniversary date of the day the initial dues are paid respecting the Sales Associate. Although Sales Associates may be billed directly by RE/MAX, LLC for these dues, you understand, acknowledge and agree that such direct billing will not relieve you of your obligation to timely pay RE/MAX, LLC the Annual Dues amount for each Sales Associate who fails to timely pay Annual Dues in full. You agree that RE/MAX, LLC is a third party beneficiary of your obligation to pay these dues.

You understand and acknowledge that the Annual Dues payment obligation is intended to compensate RE/MAX, LLC for certain benefits and services afforded by it to you and your Sales Associates and to other sales associates who are affiliates of the RE/MAX Network, and that failure to pay Annual Dues in a timely manner may result in suspension of some or all of these benefits and services. The benefits and services currently provided by RE/MAX, LLC include, but are not limited to: inclusion of your office name, your personal name and the names of your Sales Associates in the RE/MAX web roster on RE/MAX Mainstreet, and participation in the RE/MAX referral network, subscription and access to RE/MAX Mainstreet and the RE/MAX Internet based services provided through that website; and access to the RE/MAX University Catalog and the right to receive all free RE/MAX University programming and to receive and earn credit for RE/MAX University designation programming; eligibility for RE/MAX, LLC's performance awards; eligibility to receive referrals from LeadStreet and RE/MAX, LLC's Referral Department; rights to register, attend and participate in RE/MAX, LLC's annual convention or other programs; and maintenance and protection of the valuable RE/MAX Marks.

RE/MAX, LLC may, once in any calendar year, increase the amount of Annual Dues described above to offset its operating expenses by not more than twenty percent (20%) of the then existing dues amount. You agree to make all payments to RE/MAX, LLC under this Section or any other Section of this Agreement to RE/MAX, LLC, at P.O. Box 3907, Englewood, Colorado 80155, or to such other address as RE/MAX, LLC may designate during the Term of this Agreement.

H. QUOTA DEFICIENCY FEE.

If you fail to satisfy and maintain the Quota requirements set forth in Section 7, you agree to pay us a monthly Quota Deficiency Fee in an amount equal to two (2) times monthly Management Fee, multiplied by the number of Sales Associates by which you are below the Quota required for your Office. The Quota Deficiency Fee is due and will be considered late if not received by us on the fifth (5^{th}) day of each month following the month for which such fee is applicable. You understand and acknowledge that your obligation to pay the Quota Deficiency Fee (i) does not relieve you of your obligation to satisfy the Quota requirements set forth in this Agreement, and (ii) does not diminish any of our rights under this Agreement, including, but not limited to, our right to terminate or decline to renew this Agreement for your failure to satisfy and maintain your Quota. Notwithstanding the above, for the first six (6) month period during which you are required to pay a Quota Deficiency Fee, we will not terminate this Agreement or take any other action that we are permitted to take under this Agreement as a result of your failure to satisfy and maintain your Quota, if you timely pay us the Quota Deficiency Fee during each of those six (6) months. If at the end of the first six (6) month period during which you were required to pay a Quota Deficiency Fee you continue to be in violation of the Quota requirements set forth in Section 7, or if at any time you fail to pay us the required Quota Deficiency Fee, then, at that time or at any time thereafter if you continue to be in violation of the Quota requirements set forth in Section 7, we may take any action that we are permitted to take under this Agreement as a result of your failure to satisfy and maintain your Quota.

I. DOCUMENT PREPARATION FEE.

You agree to pay us a $500 charge to cover the administrative costs incurred by RE/MAX Regional each time we prepare documents in connection with certain activities during the Term of this Agreement, including but not limited to amendment of the Agreement, default under the terms of the Agreement, termination of the Agreement prior to the end of the Term, and for preparation of promissory notes or similar documents in connection with amounts owed to us or to RE/MAX, LLC under the terms of this Agreement. Document Preparation Fees will be billed as incurred, and must be paid in full in connection with the execution and delivery of such documents, or, in the event of a default under the Agreement, as part of the cure of any such default.

J. PAYMENT.

You agree to pay us and RE/MAX, LLC, as appropriate, all fees, dues, and charges in a prompt and timely manner, as we or RE/MAX, LLC may specify from time-to-time. You agree to comply with any requirement that we may impose to the effect that certain or all fees, dues, and charges specified in this Section 6 be paid by wire transfer, direct deposit, automated

clearinghouse ("ACH") transfer, credit card, or by such other means as we may specify from time-to-time, in accordance with such procedures as we may specify from time-to-time.

K. LATE FEES / LATE PAYMENT CHARGES.

If you fail to make any payments to us or RE/MAX, LLC by their due date, you agree to pay us or RE/MAX, LLC, as the case may be: (a) a late fee equal to twenty percent (20%) of the amount owed, to compensate us or RE/MAX, LLC for the additional administrative costs and expenses incurred in handling overdue payments; and (b) a late payment charge on all amounts owed but unpaid in the amount of 1.5% per month (an annual percentage rate of 18%, compounded monthly; provided, however, that if the foregoing fees and charges exceed the highest amount permitted under applicable law, then such fees and charges shall be calculated to be the highest amount legally permitted. If we or RE/MAX, LLC are ever deemed to have contracted for, charged or received late fees or late payment charges on any overdue sums in an amount that exceeds the amount permitted under applicable law, then such excess amount shall be deemed intended for, and will be applied as, payment of outstanding fees or other amounts due under this Agreement and, if no such amounts remain outstanding, such excess shall be returned to you.

L. APPLICATION OF PAYMENTS.

Notwithstanding any other provision of this Agreement, when we or RE/MAX, LLC receive a payment required under this Section 6, we or RE/MAX, LLC have the unfettered right to apply it as we see fit to any past due indebtedness of yours under this Section 6, including late charges or late fees, all without regard to how you designate or direct that a particular payment be applied.

M. SUSPENSION OF SERVICES.

If you fail to make payments to us or RE/MAX, LLC as required under this Agreement, or if you fail to satisfy any of your other obligations arising under this Agreement, then, in addition to the assessment of late charges and interest as set forth above, we and RE/MAX, LLC shall have the right to suspend, during such period of delinquency, any or all benefits and services afforded to you as a RE/MAX franchisee, or to the Sales Associates (as defined below) affiliated with your Office. Among other remedies, we will have the right to: remove you from the RE/MAX web roster and the remax.com website; deny you access to RE/MAX Mainstreet and RE/MAX University; suspend your subscription to the RE/MAX University Catalog and other publications; declare you ineligible for RE/MAX Regional and RE/MAX, LLC performance awards as well as referrals from LeadStreet or RE/MAX, LLC's Referral Department; and bar you from registering, attending or participating in RE/MAX, LLC's annual convention and other conferences. Suspension of these or any other benefits and services shall not be an exclusive remedy and shall not in any way affect our rights to receive or collect all outstanding fees, dues and other amounts owed by you or to terminate this Agreement because of your failure to make payments required under this Agreement.

N. SALES ASSOCIATE DEFINED.

For purposes of this Agreement, "Sales Associate" means (i) each person who possesses a state real estate license that is registered with the Office and (ii) each person who possesses a state real estate license and who is affiliated in any capacity with the Office, including, but not limited to, sales associates, licensed assistants, broker associates, brokers, managers and/or each designated or managing broker of record.

O. MODIFICATION OF FEES.

We may, at any time and from time-to-time, following sixty (60) days' prior written notice to you: (i) adjust the amount of any existing fee payable by you pursuant to this Agreement if reasonably necessary, as determined by us, to enhance the System; (ii) require the payment of additional fees if reasonably necessary, as determined by us, to enhance the System; (iii) increase the amount or percentage of any existing fee or require the payment of additional fees in the same amount or percentage that RE/MAX, LLC increases or adds to the fees that we are required to pay to RE/MAX, LLC; or (iv) institute new procedures reasonably expected by us to ensure the prompt payment of all fees owed hereunder. Any such adjustment in existing fees, imposition of new fees or institution of procedures referred to above shall apply, to the extent possible, to all RE/MAX franchisees.

P. REPORTING OF SALES ASSOCIATES.

On or before the fifth (5^{th}) of each month, you agree to report to us, on such form as we may prescribe from time-to-time, the identity of each Sales Associate who holds a real estate license that is registered with your Office, or that is lawfully engaged in providing real estate services for you or your Office as of the date you complete the report, and to submit with such report all payments due with respect to each Sales Associate, as provided in this Section 6. A failure to report Sales Associates in a timely manner as required by this Section 6.P shall be deemed a material default of an essential provision of this Agreement that gives us the option of pursuing termination of this Agreement pursuant to Section 13 or, in the alternative, accepting payments of back fees and dues, plus any and all applicable late charges and late fees, pursuant to Section 6.K. You agree to pay the back fees and dues, plus any and all applicable late charges and dues, if RE/MAX Regional offers that alternative to termination.

Q. SURVIVING FINANCIAL OBLIGATIONS.

In the event of an early termination of this Agreement, which for purposes of this Section shall mean any termination of the Agreement by us for cause (Section 13), or for any reason other than pursuant to mutual consent, prior to the conclusion of the Term or any applicable renewal thereof ("Early Termination"), you shall immediately become obligated to pay us for lost future revenue ("Lost Future Revenue"). Lost Future Revenue shall consist of all amounts which you would have been obligated to pay as monthly Management Fees, Promotions Fees, Hot Air Balloon Fund Fees, and Regional Development Fund Fees, from the date of Early Termination through what would have been the end of the Term (the "Termination Date"). We and you acknowledge that it would be impracticable or extremely difficult to calculate the actual amount of Lost Future Revenue payable by you, and that the following method of calculation represents a fair and reasonable estimate of foreseeable Lost Future Revenue: Lost Future

Revenue shall be (1) with respect to monthly Management Fees and Promotion Fees, an amount equal to the monthly amount of each such fee (as such fees may increase during the remainder of the Term in accordance with the schedule set forth in Schedule B to this Agreement) that would have been payable under this Agreement from the date of Early Termination through the Termination Date, multiplied by the greater of (i) the actual number of Sales Associates affiliated with the Franchise as of the date of Early Termination; and (ii) the number of Sales Associates required under Section 7 of this Agreement to have been affiliated with the Franchise during such period remaining in the Term of this Agreement; and (2) with respect to the Hot Air Balloon Fund and Regional Development Fund Fees, an amount equal to the monthly Hot Air Balloon Fund Fee and the Regional Development Fund Fee, respectively, in effect at the time of such Early Termination, multiplied by the number of months (or partial months) remaining in the Term of this Agreement. The present value of the total of these amounts calculated at a discount rate of eight percent (8%), assuming payment is made within thirty (30) days of Early Termination, shall constitute our Lost Future Revenue.

7. **QUOTA.**

You agree to have at least the following minimum number of Sales Associates in your Office by the dates and during the periods set forth below ("Quota"):

(1) ____ Sales Associates as of the 1-year anniversary of the Agreement Date and continuously thereafter until the 2-year anniversary of the Agreement Date;

(2) ____ Sales Associates as of the 2-year anniversary of the Agreement Date and continuously thereafter until the 3-year anniversary of the Agreement Date;

(3) ____ Sales Associates as of the 3-year anniversary of the Agreement Date and continuously thereafter until the 4-year anniversary of the Agreement Date; and

(4) ____ Sales Associates as of the 4-year anniversary of the Agreement Date and continuously thereafter through the remainder of the Term.

For the period beginning on the Agreement Date and continuing until the one (1)-year anniversary of the Agreement Date, Franchisee shall not, without our prior written consent, which may be withheld in our sole, unfettered discretion, recruit and/or accept for affiliation with the Office any Sales Associate that has been affiliated with the RE/MAX Network within the twelve (12) month period immediately preceding the Agreement Date. After the expiration of the foregoing recruiting and affiliation restriction, Franchisee hereby agrees that if Franchisee accepts for affiliation with the Office any Sales Associate from another RE/MAX office, Franchisee shall notify in writing the Broker/Owner of such originating RE/MAX office of its intention to accept such affiliation, and shall simultaneously provide us with a copy of such notice. In any case, only Sales Associates who have not been affiliated with the RE/MAX network for at least twelve (12) months prior to their affiliation with your Office will be counted toward satisfaction of your Sales Associate quota requirement.

Prior to this Agreement being renewed, we may adjust the minimum number of Sales Associates that you are required to have in your Office during the renewal period. Notwithstanding anything contained in this Section 7 to the contrary, in the event you have

executed this Agreement in connection with your renewal of your franchise relationship with us, then, throughout the renewal period, unless otherwise provided in the Renewal Addendum to Franchise Agreement: (i) you will be required to have under contract no fewer than the number of Sales Associates that you had just prior to the expiration of your initial Franchise Agreement, and (ii) you shall continually exercise your best efforts in trying to satisfy the quota requirements to which you were subject just prior to the expiration of your initial Franchise Agreement. We may adjust the Quota during the Term of this Agreement if there are significant changes in the factors on which the determination of the Quota was initially based; provided, however, that the Quota may not be increased by more than twenty percent (20%) in any one (1) year period. We will notify you in writing at least six (6) months before the effective date of any increase in the Quota.

8. BUSINESS IMAGE AND OPERATING STANDARDS.

A. APPEARANCE OF OFFICE.

You agree to maintain the appearance of the Office consistent with the image of a RE/MAX office business as a modern, clean, attractive and efficiently operated facility. You agree to take steps as reasonably required from time-to-time to maintain such appearance and efficient operation, including, without limitation, interior and exterior repair and cleaning of the premises of the Office; replacement of worn out or obsolete improvements, fixtures, equipment or signs; and periodic decorating.

B. SYSTEM STANDARDS AND OPERATIONS MATERIALS.

We or RE/MAX, LLC will issue to you during the Term of the Franchise one or more printed or electronic copies of operations materials containing trademark, graphic and other standards, recommendations, procedures, policies, guidelines and other information relating to other obligations under this Agreement, your use of the RE/MAX Marks and the general operation of the Office (the "Operations Materials"). The entire contents of the Operations Materials (1) will remain confidential and the property of RE/MAX, LLC: (2) constitute Confidential Information; and (3) must be returned to us upon transfer, expiration, or termination of this Agreement. We and RE/MAX, LLC will have the right to add to and otherwise modify the Operations Materials from time-to-time, if deemed necessary to improve the standards of service or quality or the efficient operation of the Office, to protect or maintain the goodwill associated with the RE/MAX Marks or to meet competition. Such additions or modifications are subject to further change by us or RE/MAX, LLC, and they are not part of this Agreement. Such additions or modifications may be made by amendment or supplement to the Operations Materials or by bulletins, notices or other written or electronic materials as we or RE/MAX, LLC may publish from time-to-time. No such addition or modification, however, shall alter your fundamental status and rights under this Agreement. This Agreement and the Operations Materials govern certain general aspects but not the day-to-day operation of the Office including, without limitation:

(1) general appearance, interior decoration, furnishings and maintenance of the Office;

(2) standardization of signs, letterheads, business cards and other similar promotional materials;

(3) use of the RE/MAX Marks;

(4) protection of Confidential Information;

(5) types, models and brands of authorized equipment, supplies and approved suppliers;

(6) use of recommended forms;

(7) use of computer hardware and software;

(8) adoption of technological developments or advancements; and

(9) the addition of new services and modification to existing services.

You acknowledge and agree that the development and operation of the Office in accordance with the System, this Agreement and the Operations Materials is essential to preserve the reputation and high standards of quality and service of RE/MAX offices and the goodwill associated with the RE/MAX Marks. You further acknowledge and agree that the recommendations, standards, procedures, policies and guidelines contained in the Operations Materials have been established for the purpose of preserving such reputation, standards and goodwill, but do not, and are not intended to, govern or control the day-to-day affairs, activities or business of the Office or the means and manner by which you conduct the operations of the Office, which shall always be your responsibility and subject to your discretion and control.

C. COMPLIANCE WITH LAWS AND GOOD BUSINESS PRACTICES.

You acknowledge that it is your sole responsibility to secure and maintain in force all required licenses, permits and certificates relating to the operation of the Office and to operate the Office in full compliance with all applicable laws, ordinances and regulations, including, without limitation, those regulations relating to real estate service businesses, brokers and salespersons, occupational hazards, health, workers' compensation and unemployment insurance, the Americans with Disabilities Act, and withholding and payment of federal and state income taxes, social security taxes and sales and service taxes. All of your advertising and promotion and the advertising and promotion of your Sales Associates, and any other advertising and promotion emanating from your Office, must be completely factual and conform to the highest standards of ethical advertising.

In all of your dealings with clients, customers, suppliers, us, RE/MAX, LLC and the public, you must adhere to the highest standards of honesty, integrity, fair dealing and ethical conduct. You agree to promptly respond to all complaints received from your customers, clients or other individuals, in an attempt to resolve any disputes in a reasonable business manner. You agree to refrain, and to ensure that your Sales Associates and any other persons affiliated with your Office refrain, from any business or advertising practice which may be injurious to our or RE/MAX, LLC's business and the goodwill associated with the RE/MAX Marks and other

RE/MAX offices. You agree to notify us in writing within five (5) days of the receipt of any notice of violation of any law, ordinance or regulation relating to the Office, or the commencement of any action, suit or proceeding, or of the issuance of any order, writ, injunction, award or decree of any court, agency or other governmental instrumentality, which may adversely affect you, your financial condition, the operation of the Office or the reputation of us or of RE/MAX, LLC.

D. INSURANCE.

You shall at all times during the Term of the Franchise, and any renewal thereof, maintain in force at your sole expense the following insurance coverage:

(1) Comprehensive general liability insurance insuring against claims for bodily and personal injury, and death and property damage caused by or occurring in conjunction with the operation of the Office or otherwise in conjunction with the conduct of business by you pursuant to the Franchise in the face amount of not less than $2,000,000 per occurrence and annual aggregate. If you are unable to obtain general liability insurance in the face amount of $2,000,000, then you must obtain comprehensive general liability insurance in the face amount of not less than $1,000,000 per occurrence and annual aggregate, as well as commercial umbrella liability insurance in the face amount of not less than $1,000,000 per occurrence and annual aggregate;

(2) Errors and omissions insurance in the face amount of not less than $1,000,000 per claim and annual aggregate;

(3) Automobile liability insurance covering each vehicle titled or leased in the name of the Franchise or any of its Owners and used at any time for the business of the Franchise. Each such automobile liability insurance policy must have (i) a combined single limit of liability for bodily injury and property damage of at least $500,000; or (ii) bodily injury liability insurance having limits of at least $250,000 per person and a minimum of $500,000 per occurrence and property damage liability insurance having limits of at least $100,000 per occurrence;

(4) A commercial, hired, and non-owned automobile policy in the face amount of at least $1,000,000 combined single limit of liability for bodily injury and property damage; and

(5) Any additional policies and coverage that may be required by law – in amounts prescribed by law – such as, but not limited to, workers' compensation insurance for employees.

All insurance policies must commence the day the Office begins operations and must name us and RE/MAX, LLC (and our respective officers, directors and employees) as additional insureds.

All insurance policies - with the exception of the errors and omissions liability insurance policy- must contain a waiver by the insurance carrier of all subrogation rights against us and

other parties covered by the insurance and must contain a provision that we receive prior written notice of termination, expiration, cancellation or modification of any such policy.

All insurance coverage required pursuant to this section must be maintained under one or more policies of insurance and contain such terms and conditions specified from time-to-time by us and issued by insurance carriers approved by us. You agree to obtain insurance policies with an insurance company that has an A.M. Best's rating of at least a B- and an A.M. Best's financial size category of at least VI.

We may from time-to-time increase the minimum amount of coverage required under any policy, and require different or additional kinds of insurance to reflect inflation, identification of new risks, changes in law or standards of liability, higher damage awards or other relevant changes in circumstances.

With respect to the comprehensive general liability and errors and omissions insurance noted above, you must secure endorsements covering each of your Sales Associates under such policies or, in the alternative, you must ensure that each Sales Associate secures such insurance on his or her own behalf. You must also ensure that each Sales Associate in your Office obtains automobile liability insurance covering each vehicle used at any time by the Sales Associate for business purposes and use your best efforts to ensure that each such policy (i) names us and RE/MAX, LLC (and our respective officers, managers, directors, and employees) as additional insureds; (ii) contains a waiver by the insurance carrier of all subrogation rights against us, RE/MAX, LLC, and other parties covered by the insurance; and (iii) provides the same amount of coverage as you are required to obtain as set forth in Subsection 8.D.(3) above; and (iv) contains a provision that we receive thirty (30) days prior written notice of termination, expiration, cancellation or modification of such policy.

All insurance policies required to be obtained pursuant to this section must be in effect at all times during the Term of the Franchise and any renewals or extensions thereof. You must furnish to us a copy of the certificate of or other evidence of the procurement, renewal or extension of each above-referenced insurance policy at least thirty (30) days prior to the effective date of such procurement, renewal or extension. If you at any time fail or refuse to maintain in effect any insurance coverage required by us, or to furnish satisfactory evidence of such insurance, we may, at our option and in addition to any other rights and remedies we may have under this Agreement, obtain such insurance coverage on your behalf, although we are under no obligation to do so. You agree to fully cooperate with us in our efforts to obtain such insurance policies, promptly execute any and all forms or instruments required to obtain any such insurance, allow any inspections of the premises of the Office which are required to obtain such insurance, and reimburse us, on demand, any costs and premiums we may incur.

If you are operating a commercial franchise, RE/MAX Regional may, in its discretion, require you to have additional insurance coverage in additional amounts.

With regard to errors and omissions insurance, you agree to purchase an extended reporting period endorsement (also known as tails insurance) covering a period of three (3) years after the expiration, termination or transfer of this Agreement, which endorsement shall be consistent with all of the conditions set forth in this section for errors and omissions insurance

coverage, including without limitation, the requirement to name us and RE/MAX, LLC as additional insureds.

Your obligation to obtain and maintain the insurance described above shall not be limited in any way by reason of any insurance maintained by us or RE/MAX, LLC, nor will your performance of such obligations relieve you of any obligations under Section 5 of this Agreement.

E. ORGANIZATION OF FRANCHISE OWNER.

If you are a Business Entity, you represent and warrant to us that you are duly organized and validly existing in good standing under the laws of the state of your incorporation, organization or registration, that you have the authority to execute, deliver and carry out all of the terms of this Agreement, and that during the Term of this Agreement the only business you (i.e., the Business Entity) will conduct, unless we permit otherwise in writing, will be the development, ownership and operation of the Office. You shall provide us with copies of your certificate of incorporation, registration or articles of organization, as the case may be, as well as copies of your by-laws, partnership or operating agreements, buy-sell agreements and any other relevant documents we request. The articles of incorporation, by-laws, articles of organization, partnership agreement and other organizational documents of such Business Entity shall recite that the issuance and transfer of any interest therein is restricted by the terms of Section 12 of this Agreement and all issued and outstanding stock certificates or certificate of membership interest or other evidence of ownership of any such Business Entity company shall bear the following clause restricting transfer:

> "The transfer of this stock (or other interest) is subject to the terms and conditions of the franchise agreement between this corporation (or other entity) and RE/MAX of Indiana Limited Partnership. These restrictions prohibit transfer without the prior written approval of RE/MAX of Indiana Limited Partnership."

You and each Owner represent, warrant and agree that you are not precluded by any contract or law from executing and carrying out all of the terms of this Agreement, all "interests" (defined in Section 12.B below) in Franchise Owner are owned in the amount and manner described in Exhibit C, that all information set forth on Exhibit C is true and accurate and that the shareholders, partners, members, officers, managers, directors, and other individuals who have legal or equitable ownership in – or the legal right to control – the Business Entity are fully described therein. You and each Owner further represent, warrant and agree to amend Exhibit C to keep it accurate and current at all times, and to promptly provide us with all amendments of Exhibit C. If you are a Business Entity, you shall not, without our prior written consent, make any change in the shareholders, partners, members, officers or directors of such Business Entity company that would require an amendment of Exhibit C.

F. MANAGEMENT OF THE OFFICE.

You agree that you or one of your principal Owners will at all times hold, or that you will secure the services of an individual acceptable to us who holds, a valid licensed real estate broker

license (or such other state license as may be required) to act as the designated or managing broker of record (the "Real Estate Broker License") under whose license the Office will be conducted (the "Manager"). Such person shall devote his or her full time and best efforts to the management and supervision of the Office. You agree to ensure that all of your Sales Associates are supervised by the Manager, and that the Manager will be charged with responsibility for continuing personal guidance, oversight, orientation, instruction and supervision of your Sales Associates, and for receipt and timely, appropriate processing of requests, reports or complaints respecting the conduct and professional performance of your Sales Associates. You and the manager shall scrupulously observe and adhere to your state's regulations affecting real estate brokers and salespeople. You agree to respond promptly to customer complaints and shall take such other steps as may be required to insure positive customer relations. You, the Manager, and each Owner that holds a Real Estate Broker License shall maintain registration of such Real Estate Broker License(s) with the Office, and with no other real estate brokerage, absent express written permission from RE/MAX Regional.

You further agree that all of your Sales Associates will be independent contractors and not your employees, that all Sales Associates will be informed that their status is as independent contractors and not employees, and that all Sales Associates will be treated in a manner consistent with their independent contractor status. You must enter into an independent contractor agreement with each of your Sales Associates containing, at a minimum, the Essential ICA Provisions. You must permit us to communicate directly with your Sales Associates concerning any matter that we deem necessary or appropriate relating to the System or your Office, without incurring any liability to you.

G. **PROFESSIONAL MEMBERSHIPS.**

You agree to join and remain a member in good standing and comply with the by-laws and rules and regulations of a local Board of REALTORS® (or comparable organization) having jurisdiction over the Office and, where applicable, you will become and remain a participant in a board-owned multiple listing service. You also agree that you and your Sales Associates will abide by the Code of Ethics of the National Association of REALTORS®.

H. **RE/MAX REFERRAL SYSTEM.**

You acknowledge the importance of the RE/MAX Referral System as an integral part of the System and to the success of RE/MAX offices. Accordingly, you will refer requests for real estate services in another city to a RE/MAX office for that city. If there is no RE/MAX office located in such city, you will refer each such request to RE/MAX, LLC's Referral Department. RE/MAX, LLC will establish procedures and make appropriate forms available to facilitate referrals between you and other RE/MAX offices and RE/MAX Affiliates.

You agree not to offer, or allow any of your Sales Associates to offer to members of the RE/MAX organization, or to engage or to allow any of your Sales Associates to engage in the business of offering to consumers or other industry practitioners, any office or agent locator or referral service which uses the RE/MAX web roster (or any other RE/MAX referral roster) or which competes with the services made generally available by RE/MAX, LLC to the RE/MAX network as a benefit of affiliation. This provision shall not be construed to prohibit or

discourage (i) any RE/MAX Affiliate from referring a local real estate brokerage customer or client to any other RE/MAX Affiliate anywhere in the world; (ii) the creation of RE/MAX agent to RE/MAX agent reciprocal referral relationships between two geographic areas or two cities; (iii) any RE/MAX Affiliate from advertising or promoting himself/herself as a provider of real estate brokerage services in his/her local real estate market; or (iv) any RE/MAX Affiliate from inviting or soliciting referrals to himself/herself for real estate brokerage services in his/her local market area.

I. BROKER/OWNER COUNCIL.

You agree to join, maintain membership at your expense and actively participate in any Broker/Owner Council we may establish. You agree to abide by all rules and regulations as may be established for the Council, including any decision reached in accordance with the rules and regulations of the Council. The Broker/Owner Council is a group comprised of all franchisees within the region who meet on a regular basis throughout the year to discuss common issues that affect them, and to exchange ideas on topics such as education, advertising, public relations, communications and current issues affecting the real estate industry.

J. SUPPLIES AND PROMOTIONAL MATERIALS.

RE/MAX, LLC prescribes standards respecting the nature and quality of the supplies and promotional materials that bear the RE/MAX Marks that you use in the operation and promotion of the Office. Although neither you nor your Sales Associates are required to purchase supplies or promotional materials from a source approved by RE/MAX, LLC, we encourage you to do so. If you or your Sales Associates obtain supplies or promotional materials from sources other than a source approved by RE/MAX, LLC, you agree to ensure that they are of at least the same quality as are available from sources approved by RE/MAX, LLC. You shall ensure that all such materials and supplies, including without limitation, all advertising, promotional and marketing materials and all stationery and signage that you use or that are used by your Sales Associates comply with the standards and guidelines established by us or RE/MAX, LLC for proper use of the RE/MAX Marks including, without limitation, the standards and guidelines set forth in the Trademark Manual. You understand and agree that neither we nor RE/MAX, LLC assume any liability for the acts or omissions, or guarantees the performance, of any supplier, whether approved or not.

K. MODIFICATIONS AND IMPROVEMENTS TO SYSTEM.

We or RE/MAX, LLC may change the System or any part of the System at any time, and such changes shall become part of the System referred to in this Agreement. Any improvements in the System that may be developed by you shall be dedicated, conveyed to and become the sole and exclusive property of RE/MAX, LLC, which will have the right to adopt and perfect such improvements without compensation to you.

L. REAL ESTATE LISTINGS AVAILABLE VIA RE/MAX.COM.

In order to promote and enhance the RE/MAX name and to encourage members of the public to use RE/MAX real estate services, RE/MAX, LLC has developed and hosts the website remax.com. Among the services and types of information available via remax.com are all the

real estate listings in thousands of cities and towns throughout the United States. You understand and acknowledge that one of the purposes of remax.com is to encourage members of the public to use remax.com as a source of information for their real estate needs and that the success of remax.com in attracting consumers depends on full participation by all RE/MAX offices. Accordingly, you agree that unless instructed otherwise by the client, you will give any authority, consent or instructions required, and otherwise use your best efforts, to ensure that all of your Office real estate listings, including those of your Sales Associates, are made available to remax.com and that neither you nor your Sales Associates will decline, or opt out of, any opportunity to have each such listing entered on or forwarded to remax.com. With respect to pictures or other media that you supply to us (including those intended for use in listings on remax.com), to the extent the copyright of any such picture or other media is owned by you, you grant us a fully paid up and royalty-free perpetual and irrevocable license and right to use and sublicense such pictures and other media for any purpose we deem appropriate in any media now in existence or hereafter created. To the extent that you do not own the copyright in such pictures or other media, you represent and warrant that you have permission to use such pictures and other media and to authorize the uses contemplated by this section, and agree to indemnify and hold us harmless against any claims by any third party that our use infringes upon such third party's rights.

M. MAINTAINING INDEPENDENCE, AVOIDING CONFUSION AND ADVERTISING COMMISSIONS.

You should maintain the independence of your Office in determining the commission rates charged. You and your Sales Associates shall refrain from any comment, advertising, or other conduct that could lead consumers to believe that the commission rates or fees of RE/MAX offices or agents are uniform, set at any specific level, or are not negotiable. In order to avoid consumer confusion about commission rates and fees and in marketing services to be rendered, the advertising of commission rates and fees is discouraged. However, in the event that you elect to advertise commission rates or fees, or allow others affiliated with your Office to advertise commission rates or fees, and the advertisement includes the RE/MAX name and/or RE/MAX Marks, the advertisement shall also include the following notice to the public in a typeface at least one-half the size of the largest typeface used in the advertisement to specify the commission rates or fees being offered: "Different commission rates, fees and listing and marketing services may be offered by other RE/MAX Franchisees and sales associates serving this market area." In addition, it shall be the responsibility of the party advertising commission rates or fees to ensure that potential clients fully understand the listing and marketing services that will be provided by that party in the market area.

N. BROKER/OWNER CONFERENCES, MEETINGS AND RETREATS.

You are strongly encouraged to actively participate in and attend all Broker/Owner conferences, meetings, and retreats we schedule, and you agree to pay any associated registration fees. You agree that you are responsible for all travel, meal, lodging, and entertainment expenses you or anyone else from your Office incurs while attending a Broker/Owner conference, meeting or retreat.

EXHIBIT A

O. COVENANT CONCERNING ANTI-TERRORISM.

You and your Owners agree to comply with and/or to assist us to the fullest extent possible in our efforts to comply with Anti-Terrorism Laws (as defined below). In connection with such compliance, you certify, represent, and warrant that neither you nor your Owner's property or interests are subject to being "blocked" under any of the Anti-Terrorism Laws, and that neither you nor your Owners are otherwise in violation of any of the Anti-Terrorism Laws. "***Anti-Terrorism Laws***" means Executive Order 13224 issued by the President of the United States, the USA PATRIOT Act, and all other present and future U.S. federal, state and local laws, ordinances, regulations, policies, lists and any other requirements of any governmental authority addressing or in any way relating to terrorist acts and acts of war. Any violation of the Anti-Terrorism Laws by you, any of your Owners, or any of your or your Owners' employees, or any "blocking" of your or any of your Owners' assets under the under the Anti-Terrorism Laws, shall constitute grounds for immediate termination of this Agreement and any other agreement that you or any your Owners has entered into with us (or any of our affiliates) in accordance with the termination provisions of this Agreement.

You shall notify RE/MAX Regional in writing immediately of the occurrence of any event that renders the foregoing certifications, representations and warranties of this Section 8.O. incorrect.

P. COMPLIANCE WITH THE UNITED STATES FOREIGN CORRUPT PRACTICES ACT.

You and your Owners represent that you are familiar with the United States Foreign Corrupt Practices Act, 15 U.S.C. §78dd-2 (the "FCPA"), and the purposes of the FCPA. In particular, you and your owners understand the FCPA's prohibition of the payment of money or the gift of anything of value, either directly or indirectly, to a foreign official to influence the foreign official in his or her official capacity, to induce the foreign official to do or omit to do an act in violation of his or her lawful duty, or to secure any improper advantage in order to assist in obtaining or retaining business for or with, or directing business to, any person. Currently a copy of the FCPA may be found on the Internet at: www.justice.gov/criminal/fraud/fcpa/. You and your Owners represent and warrant that you will take no action that would constitute a violation of the FCPA or any law of similar effect or nature. Further, you and your Owners represent and warrant that you are, and shall remain, in compliance with all applicable legal requirements and RE/MAX, LLC's policies against corrupt business practices, against money laundering and against facilitating or supporting persons who conspire to commit crimes or acts of terror against any person or government. You agree to immediately notify us in writing of the occurrence of any event which renders the representations and warranties of this section incorrect.

9. GUIDANCE AND ASSISTANCE.

A. TRAINING.

You or your Owners who are responsible for the Office, and the Manager, if any, shall attend in its entirety and successfully complete, prior to the opening of the Office, the four and one-half (4 ½)-day management training course conducted for new RE/MAX office franchisees

by RE/MAX, LLC at RE/MAX, LLC's headquarters in Denver, Colorado or such other location as RE/MAX, LLC shall designate. One or more persons from the Office may attend the training course without payment of any training fee, although you will be responsible for all travel, meal, lodging and entertainment expenses you or anyone else from the Office incurs while attending the training program. The training program will cover the broad operational spectrum of a RE/MAX office franchise including, but not limited to: office and business establishment, recruiting and growth methods, fiscal management, and exposure to approved suppliers and standards. Teaching methods and tools utilized will include: course workbook, interactive flash drive, the recruiting presentation series, extensive audio and visual materials, slides and overhead usage. Other than materials of general usage, such as the slide presentation, you or your Owner and the Manager, if any, attending the training program will be entitled to use the materials and forms distributed, on a loan basis only. These materials must be returned to us upon termination or expiration of this Agreement.

In addition, if required by us, prior to renewal of the Franchise, you or one of your principal Owners and the Manager, if any, shall, at your expense (including the cost of the course and all travel, meal, lodging and entertainment expenses), complete the following courses: RE/MAX 201: Boot Camp for Brokers and Managers; RE/MAX 501: Maximizing Your Office Potential; and/or such other training deemed necessary by us (or provide us with evidence that you or your Owner and the Manager, if any, have satisfied requirements equivalent to such courses or training).

B. OPENING ASSISTANCE.

Prior to the opening of the Office, we will make available to you standards, operating procedures, policies and guidelines to familiarize you with the System and to assist you in the opening of the Office. These materials will also provide you with guidelines for standardization of signs, letterheads, sales, promotion, office design and other similar materials. In addition, if requested, we will assist you, at your expense, with your open house, office design and layout, conversion of sales staff, and with your initial publicity and advertising campaign.

C. ADVERTISING AND PROMOTION.

We and/or our affiliates will collect monies paid into, control and administer the Promotion Fee, Hot Air Balloon Fund Fee and Regional Development Fund Fee described in Section 6 of this Agreement. From time-to-time, we may also institute special promotional programs to benefit RE/MAX franchisees and for which you may be required to pay additional fees. We will have the unfettered right to allocate all promotion and advertising fees towards maintenance and administration of the funds and the preparation and placement of local or regional advertising materials, programs and public relations activities, and technology related services (which include, without limitation, professional services pertaining to LeadStreet, such as web hosting, licensing, and consulting fees). Such advertising will be disseminated through television, radio, billboard, magazine, newspaper, internet, and other media campaigns. A portion of the Promotion Fee will be allocated to the NBMA, which is controlled and administered by RE/MAX, LLC. You understand that the promotional and advertising programs administered by us and by RE/MAX, LLC are intended to maximize general public recognition of the RE/MAX Marks and the System and services offered by RE/MAX offices. None of

RE/MAX Regional, RE/MAX, LLC or our affiliates undertake any obligation to ensure that expenditures of these fees are proportionate or equivalent to the payment of these fees by RE/MAX offices or that any RE/MAX office will benefit directly or in proportion to its contribution of these fees from the development or placement of advertising and marketing programs. Neither we nor RE/MAX, LLC has any fiduciary obligations to you or any other RE/MAX office in connection with the establishment of these Funds or the collection, control or administration of monies paid into them and we and RE/MAX, LLC expressly disavow the existence of any such fiduciary relationship.

D. CONSULTATION AND EDUCATIONAL COURSES.

We will make available to you at the Office, on a reasonable basis, consultation and guidance relating to the management and operation of the Office. We will have the right to charge you, and you agree to pay our per diem rate and all travel, lodging, meal and related expenses incurred by us for any consulting services provided to you beyond the services ordinarily provided by us to RE/MAX offices. The time and frequency of any such services will be subject to the availability of our personnel. In addition, from time-to-time, various educational courses and other assistance will be made available in such areas as fiscal management, office operations, recruiting and retention of Sales Associates and financial planning.

You are required to meet with our Regional Director at our regional office at least once every six (6) months throughout the term of this Agreement (at times convenient to us) for the purpose of discussing your performance and other matters of concern or importance to you or us.

If, in our sole business judgment, we determine for any reason that you would benefit from specific training programs or business consulting services, including but not limited to any failure to meet the goals set forth in your Business Plan, we can require you to participate in such programs and consulting services, each at your own expense.

E. SYSTEM RECOGNITION AND PROMOTION.

We will encourage through our efforts and in conjunction with the efforts of RE/MAX, LLC the use of the RE/MAX Marks and the System and RE/MAX real estate services on a national and international basis. To this end, RE/MAX, LLC has established and maintains a national and international referral system which will be made available to you and in which you will be obligated to participate.

F. BROKER/OWNER ATTENDANCE AT MEETINGS, CONVENTIONS AND OTHER EVENTS.

You may be required to attend, and pay the registration fees and expenses (including travel, lodging, meal and entertainment expenses incurred by you or anyone from your Office) associated with, certain meetings, seminars, conferences, sales rallies, and other events. You will be entitled to attend RE/MAX, LLC's annual conventions, as well as occasional education seminars it holds, designed to enhance the image of the System, assist franchisees in recruiting potential Sales Associates, and provide a forum for the exchange of ideas and information on the operation of RE/MAX offices. Attendance is highly recommended. If you decide to attend any

of RE/MAX, LLC's conventions or seminars, you will also be responsible for payment of all travel, meal, lodging and entertainment expenses, as well as a registration fee, which currently ranges from $195 to $800 per person (the registration fee includes educational, conference and registration materials). Nominal fees or charges may also be assessed for a variety of other social functions, as well as for educational and certification classes for obtaining professional credits.

G. PROFESSIONAL PUBLICATIONS AND MATERIALS.

You will be entitled to receive from time-to-time any publications and material produced and distributed by RE/MAX, LLC to recognize the achievements of RE/MAX Sales Associates and to highlight recent and future events that are of interest to RE/MAX Affiliates. Additionally, RE/MAX, LLC currently makes available to all RE/MAX affiliates via RE/MAX Mainstreet, a roster of approved suppliers as well as the RE/MAX web roster (an online referral roster). All information in the RE/MAX web roster and roster of approved suppliers is owned by RE/MAX, LLC and is considered confidential and proprietary. You will need to subscribe to RE/MAX Mainstreet to receive many of these materials.

10. RECORDS AND REPORTS.

A. ACCOUNTING AND RECORDS.

During the Term, you agree to establish and maintain record keeping and accounting systems conforming to the requirements prescribed by us from time-to-time. All books and records of the Office shall be maintained at the Premises.

B. REPORTS.

(1) Sales Associates.

Within five (5) days after the close of each calendar month, you must submit in the manner we prescribe a statement listing each Sales Associate whose license is registered with your Office, and, for each Sales Associate, the gross monthly real estate commissions earned and the number of transactions closed for such month. Immediately upon a Sales Associate's termination, you must submit a status change form (or such other form as we may designate) reflecting the termination. If you fail to timely report the termination of a Sales Associate, you will be billed for, and required to pay, Management Fees and Promotion Fees for each month the Sales Associate was not in your Office until the date you report the Sales Associate terminated.

(2) Financial Statements.

Within ninety (90) days after the close of your fiscal year for federal income tax purposes, you must submit to us a financial statement containing a balance sheet and results of operations, including gross sales and revenues for such year.

(3) Other Reports.

In addition, you must submit to us in a timely manner such other reports or information as we may prescribe or request from time-to-time, including but not limited to: such brokerWolf reports (or, if you do not use brokerWolf, such equivalent reports from your back-office management software system in form and substance acceptable to us in our sole and absolute discretion) as we may prescribe or request from time-to-time; and such revisions or updates to your Business Plan as we may request from time-to-time during the Term.

All reports, financial statements and information shall be on forms prescribed or approved by us and shall be verified and signed by you and your chief financial officer. A failure to file any report in a timely manner as required by this Section 10.B shall be deemed a material default of an essential provision of this Agreement that gives us the option of pursuing termination of this Agreement pursuant to Section 13.

C. OTHER INFORMATION.

No reports and records or other information supplied to RE/MAX, LLC or us shall be considered confidential. We and RE/MAX, LLC shall have the right to use information derived from that supplied by you for our own business purposes, to disclose such information as may be required by law and governmental authority, and to aggregate such information with other franchise information and disclose such aggregated information as we deem appropriate. You will provide us or RE/MAX, LLC and/or cooperate with us or RE/MAX, LLC in collecting other information as we or RE/MAX, LLC may reasonably request, including information for research and development of services, products and programs, identification or demographic information, industry reports, and preparation of the franchise disclosure documents.

11. INSPECTIONS AND AUDITS.

A. ACCESS TO RECORDS.

To determine whether you are complying with this Agreement, we will have the right at any time during business hours, and upon notice as provided below, to inspect, audit and copy, or cause to be inspected, audited and copied, at your Office or such other place where your records may be located, the business and accounting records of the Office, including but not limited to closed property transaction files, journals, orders, receipts, and other data relating to the operation of your Office, including the books and records of: (i) any business whose funds may be commingled with the funds of the Office; (ii) any business operated at the same location as the Office; or (iii) any other business using the RE/MAX Marks. As part of any such inspection and audit, we also have the right to interview Office personnel and staff, inspect your computer system (including any hardware, software, or storage media and "cloud" storage sites), and

conduct such other tests, reviews and inspections deemed desirable by us. You will cooperate, and you must ensure that everyone affiliated with your Office cooperates, with us or our representatives (including but not limited to independent accountants) that may be hired by us to conduct such inspection, interviews or audit, and you will permit us or our representatives to take photographs, videos, or other electronic recordings of the Office.

We will provide you with not less than forty-eight (48) hours advance notice of any inspection and audit, except if a circumstance arises where we believe that criminal, unethical or other activity that adversely affects—or is likely to adversely affect—the reputation or image of the RE/MAX name or the goodwill associated with the RE/MAX Marks is occurring in your Office. In such event, we shall have the right at any time during business hours, without notice to you, to conduct an inspection and/or audit of the business and accounting records of your Office.

B. AUTHORIZATION FOR RELEASE OF RECORDS; AUTHORIZATION TO CONDUCT CREDIT REPORT AND BACKGROUND CHECK.

You authorize any federal, local or state body regulating or supervising real estate brokerage practices to release to us all records and information it maintains for your Office including the names of Sales Associates licensed with your Office, complaints filed against you or anyone affiliated with your Office or information pertaining to any disciplinary actions taken against you or anyone affiliated with your Office. You also authorize us to conduct a criminal background check, a credit report check, and/or asset investigation, on you or anyone affiliated with your Office, at any time (including up to one year after the termination or expiration of this Agreement), and for any reason, including but not limited to making decisions relating to the enforcement of the Agreement. You agree to fully cooperate with us in accessing information maintained by the regulatory authorities and conducting a credit report or criminal background check and, to that end, you agree to provide us with such information, execute such documents or take such other action as we deem necessary.

C. UNDERSTATEMENT OF AMOUNTS OWED/COSTS OF INSPECTION OR AUDIT.

In the event any such inspection or audit reveals an understatement of any fees, payments or amounts owed to us or RE/MAX, LLC, you must pay, within ten (10) days after receipt of the inspection or audit report, all such fees, payments or amounts plus late charges and interest at the rate provided in this Agreement from the date originally due until the date of payment. Further, in the event an inspection or audit is made necessary by your failure to furnish reports, supporting records or other information, as required by this Agreement, or to furnish reports, records and information on a timely basis, or if an understatement of any amounts owed to us or RE/MAX, LLC for any three (3)-month period is determined by the audit or inspection to be greater than five percent (5%), or if the inspection reveals other conduct that is in any way unlawful or in breach of this Agreement, you must reimburse us for the cost of the audit or inspection, including, without limitation, the charges of any of our representatives (including but not limited to any independent accountants) and the travel expenses, room and board, and compensation of our employees. The foregoing remedies are in addition to all other remedies and rights we may have under this Agreement or under applicable law.

EXHIBIT A

12. TRANSFER AND ASSIGNMENT PROVISIONS.

A. TRANSFER BY RE/MAX REGIONAL.

This Agreement is fully transferable by us and will inure to the benefit of any person or entity to whom it is transferred, or to any other legal successor to our interest in this Agreement. You consent to any such assignment or transfer. Following the effective date of transfer or assignment, you shall look solely to the transferee or assignee, and not to us, for the performance of all obligations contained in this Agreement. We will not be required to obtain your consent in connection with any such transfer or assignment. You agree to execute any documents and take such other action required or deemed necessary by RE/MAX Regional or its transferee or assignee to effectuate such transfer or assignment.

B. NO TRANSFER OR ASSIGNMENT BY FRANCHISE OWNER WITHOUT APPROVAL.

You understand and acknowledge that the rights and duties created by this Agreement are personal to you, or if you are a Business Entity, your Owners, and that we have entered into this Agreement in reliance upon the individual or collective character, skill, aptitude, business ability and financial capacity of you or, if appropriate, your Owners. Accordingly, none of this Agreement, the Franchise, all or a substantial portion of the assets of the Franchise or Office, or any "interest" (defined below) belonging to you or your Owners may be voluntarily, involuntarily, directly or indirectly sold, leased, conveyed, given away, subfranchised, sublicensed, pledged, mortgaged, assigned, transferred, encumbered or otherwise disposed of by you or your Owners (including, without limitation, by will, inheritance, declaration of or transfer in trust or by operation of law) without our prior written approval. Any such assignment, transfer or encumbrance without such approval shall have no effect and shall constitute a breach of this Agreement. A transfer of ownership of the Franchise or Office may only be made in conjunction with a transfer of this Agreement. For purposes of this Section and any other Section of this Agreement, an "interest" shall mean shares of your stock or securities convertible into shares of your stock (if you are a corporation); proprietorship, partnership, membership or other interest (if you are a proprietorship, partnership or limited liability company or other type of business entity); or any other equitable or legal right in or to any shares of such stock or in any such proprietorship, partnership, membership or other interest. Any unauthorized sale, lease, conveyance, gift, subfranchise, sublicense, pledge, mortgage, assignment, transfer or encumbrance, by operation of law or otherwise, or any attempt to do so, shall be deemed void and grounds for us to terminate this Agreement.

C. CONDITIONS FOR TRANSFER OR ASSIGNMENT OF LESS THAN CONTROLLING INTEREST.

If you, or if you are a Business Entity, your Owners, propose to transfer or assign any interest or interests totaling, in the aggregate, less than a controlling interest, we will not unreasonably withhold our consent to such transfer or assignment to persons who meet our qualifications for owners of RE/MAX offices, provided that you meet our reasonable conditions as a prerequisite for receiving our approval. "Controlling interest" shall be defined to be, among other things, any interest of fifty percent (50%) or greater ownership interest in a proprietorship,

partnership or limited liability company or other type of business entity or, if a corporation, any interest of fifty percent (50%) or greater of the equity and voting power of all issued and outstanding capital stock.

Before we consent to any such transfer or assignment, you must satisfy certain conditions, including but not limited to the following:

(1) you and your Owners must be in compliance with the terms and conditions of this Agreement and any other franchise or other agreements you or your Owners may have with us;

(2) you must submit to us for our review and prior approval all proposed transfer or assignment documents, including any purchase and sale agreements to be executed in connection with such transfer or assignment, which documents must be acceptable to us;

(3) you must pay any amounts due by unpaid owed to us, to RE/MAX, LLC, and all other persons and entities as may be required by this Agreement, including the entire unpaid balance of any promissory note with us or RE/MAX, LLC and any interest due on such note;

(4) the transferee or assignee must meet our then current subjective and objective standards for new franchisees, including, if then applicable, those relating to relevant experience, education and licensing, background and past record of compliance with laws, financial capacity, skills, integrity and other qualities of character. In order for us to make this determination you must submit to us upon our request current, accurate financial statements and other documents of the proposed transferee(s) or assignee(s) sufficient to enable us to determine and to either approve or disapprove, in our sole discretion, the character, creditworthiness, business experience, professional credentials and ethical background of the proposed transferee(s) or assignee(s), and the prospective transferee or assignee must also execute a form authorizing RE/MAX Regional to obtain a consumer report and to conduct a credit and background check;

(5) you must pay us a transfer fee equal to $1,500 plus the amount of any costs, such as legal and administrative expenses, we or RE/MAX, LLC may incur in connection with such transfer or assignment; and

(6) you and your Owners and the transferee(s) or assignee(s) must execute a transfer agreement or similar document we request, a personal guaranty and such other documents as we may require or deem important or desirable to the preservation and protection of our rights, and must provide both us and RE/MAX, LLC, and our and their respective officers, managers, directors, employees, affiliates and agents, on the then current form we prescribe, a full general release and waiver in the form that we require.

You agree that it shall not be unreasonable for RE/MAX Regional to refuse to consent to an assignment or transfer on the basis that one or more of the above conditions have not been met.

D. CONDITIONS FOR TRANSFER OR ASSIGNMENT OF AGREEMENT OR CONTROLLING INTEREST IN FRANCHISE OWNER.

If you or your Owners propose to transfer or assign this Agreement, the Franchise, all or substantially all of the assets of the Franchise or Office, or a controlling interest (as defined above), and provided we do not exercise our rights of first refusal pursuant to Section 12.H, we will not unreasonably withhold our consent to such a transfer or assignment provided you or your Owners, as appropriate, submit to us in connection with the request for our consent such financial and other information we prescribe demonstrating that the transferee or assignee has sufficient business experience, aptitude, qualifications and financial resources in our judgment to operate the Office and that the transferee or assignee otherwise meets our criteria for ownership of a RE/MAX franchise. Because we have historically placed great value on developing business relationships with, and have relied on the personal skills of, individual franchise owners, we have generally permitted transfers or assignments only to individuals or entities closely owned or held by such individuals. In addition, our franchise agreements prohibit, and we have traditionally refused to permit, franchisees from engaging in competitive businesses. Moreover, we have historically declined transfers or assignments to competitors or entities controlled by or directly or indirectly affiliated with competitors or organizations in which conflicts of interest may arise, or for which their RE/MAX real estate office will not be their principal focus. Accordingly, it shall not be deemed unreasonable for us, and we expressly reserve the unfettered right, (i) to withhold our consent to proposed transfers or assignments to institutions (whether held publicly or privately) including, by way of example only, banking or other financial institutions, mutual fund companies and insurance companies, mortgage companies and title companies; and (ii) to withhold our consent to transfers or assignments to individuals or entities offering products or services that directly or indirectly compete with the products or services offered by RE/MAX offices, RE/MAX Regional or RE/MAX, LLC or that are designed to bolster other business activities as opposed to focusing primarily on the RE/MAX real estate brokerage business, including without limitation, real estate, mortgage, title, insurance, relocation or franchising services.

In addition, before we consent to any such transfer or assignment, you must satisfy certain conditions, including but not limited to the following:

(1) you and your Owners must be in compliance with the terms and conditions of this Agreement and any other franchise agreements you or your Owners may have with us;

(2) you must submit to us for our review and prior approval all proposed transfer or assignment documents, including any purchase and sale agreements to be executed in connection with such transfer or assignment, which documents must be acceptable to us;

(3) you must pay any amounts due but unpaid owed to us, to RE/MAX, LLC, and to all other persons and entities as may be required by this Agreement, including the entire unpaid balance of any promissory note with us or RE/MAX, LLC and any interest due on such note;

(4) the transferee or assignee must meet our then current subjective and objective standards for new franchisees, including, if then applicable, those relating to relevant experience, education and licensing, background and past record of compliance with laws, financial capacity, skills, integrity and other qualities of character. In order for us to make this determination you must submit to us upon our request current, accurate financial statements and other documents of the proposed transferee(s) or assignee(s) sufficient to enable us to determine and to either approve or disapprove, in our sole discretion, the character, creditworthiness, business experience, professional credentials and ethical background of the proposed transferee(s) or assignee(s), and the prospective transferee or assignee must also execute a form authorizing RE/MAX Regional to obtain a consumer report and to conduct a credit and background check;

(5) the transferee or assignee, if appropriate as determined by us, must agree to attend and successfully complete the RE/MAX management training course then being offered by RE/MAX, LLC;

(6) if your lease or sublease for the Premises requires it, the landlord of the Premises must have consented to the assignment of the sublease of the Premises to the transferee or assignee;

(7) you must pay us a transfer fee equal to $3,000 plus the amount of any costs, such as legal and administrative expenses, we or RE/MAX, LLC may incur in connection with such transfer or assignment;

(8) you and your Owners must execute a transfer agreement or similar document we request, and must provide us, RE/MAX, LLC, any of our and their affiliates, and our and their respective officers, managers, directors, employees, affiliates and agents, on the then current form we prescribe, a full general release and waiver in the form that we require;

(9) the transferee or assignee must execute a new franchise agreement with us in the form we are then customarily using in connection with the granting of franchises for RE/MAX offices, which agreement shall supersede this Agreement and may have different terms than this Agreement, including, without limitation, higher fees, advertising and promotion contributions, and quotas. The new franchise agreement shall provide for a term coinciding with the remainder of the Term;

(10) the transferee or assignee must execute and deliver to us a transfer agreement or similar document we request, a personal guaranty and such other documents as we may require or deem important or desirable to the preservation and protection of our rights; and

(11) you must purchase an extended reporting period endorsement covering a period of three (3) years from the date of transfer of this Agreement (as set forth in more detail in Section 8.D).

You agree that it shall not be unreasonable for RE/MAX Regional to refuse to consent to an assignment or transfer on the basis that one or more of the above conditions have not been met.

Any addendum, amendment or other modification to this Agreement that grants to you any type or kind of territorial rights, including but not limited to a "Reserve Territory" or a "Protected Territory," is not transferable or assignable and will not become a part of the franchise relationship between RE/MAX Regional and the transferee(s) or assignee(s).

E. DEATH, INCOMPETENCY OR PERMANENT DISABILITY.

Upon the death, incompetency or permanent disability (as defined below) of you or any Owner, the executor, administrator, conservator or other personal representative (hereafter, "Personal Representative") of such person must sell or transfer his/her interest in this Agreement and the Franchise within a reasonable time, not to exceed six (6) months from the date of death or determination of incompetency or permanent disability, to a person we have approved. Such sale or transfer, including, without limitation, transfers by a will or by inheritance, will be subject to all the terms and conditions for assignments and transfers contained in this Agreement, including but not limited to our right of first refusal as set forth below in Section 12.H. During that six (6)-month period, the Office must be under the primary supervision of a Manager who has a valid state real estate broker license and otherwise meets our management qualifications. Failure to immediately appoint a Manager or to dispose of such interest within that six (6)-month period of time, will constitute grounds for immediate termination of this Agreement.

For purposes of this Agreement, "incompetency" or "permanent disability" shall mean the inability to perform the usual and customary tasks necessary to operate the Office in compliance with the terms and conditions of this Agreement through the remainder of the Term. If requested by RE/MAX Regional, you or your Personal Representative shall provide RE/MAX Regional with a written opinion from your medical doctor stating that you are incompetent or that you have a permanent disability rendering you unable to operate the Office for the remainder of the Term.

F. TRANSFER TO BUSINESS ENTITY.

If you are in full compliance with this Agreement, we will not unreasonably withhold our approval of a proposed assignment or transfer of this Agreement to a Business Entity provided you, or if there is more than one of you, all of you together, maintain and own a controlling interest (as defined above) in the Business Entity and you execute a Guaranty and Assumption of Obligations, in the form prescribed by us, in which you personally guarantee and agree to be bound by, and responsible for the performance of, all of the terms, conditions, covenants and obligations under this Agreement. In addition, we reserve the right to impose reasonable conditions as a prerequisite for receiving our approval to any proposed assignment or transfer to a Business Entity. Such conditions may include some or all of the conditions set forth in Section 12.D. above, as we deem appropriate under the circumstances, except that during the

first year of the Term of this Agreement, we will not charge a transfer fee for the first permitted assignment or transfer under this Section 12.F if you purchased the Franchise in your individual capacity. In the case of assignment or transfer of this Agreement to a Business Entity, the Business Entity, unless we permit otherwise in writing, shall conduct no business other than the business of the Office and must be managed by one of the principal Owners of the Business Entity or Manager as described in Section 8.F. All Business Entities must comply fully with Section 8.E of this Agreement. The articles of incorporation, by-laws, articles of partnership, partnership agreement and other organizational documents of the Business Entity or Manager as described in Section 8.F shall recite that the issuance and transfer of any interest therein is restricted by the terms of this Section 12 and all issued and outstanding stock certificates of any such corporation shall bear a legend reflecting or referring to the restrictions of this Section 12. Transfers of shares, partnership interests, membership or other interests in such corporation, partnership or limited liability company will be subject to the provisions of this Section 12.

G. EFFECT OF APPROVAL OF TRANSFER OR ASSIGNMENT.

Our consent to a transfer or assignment of any interest subject to the restrictions of this Section shall not constitute a waiver of any claims we may have against the transferor or assignor under this Agreement, nor shall it be deemed a waiver of our right to demand exact compliance with any of the terms or conditions of the new franchise agreement by the transferee or assignee.

H. RIGHT OF FIRST REFUSAL.

Except as otherwise provided in Section 12, your right, and/or any of your Owners' rights, to transfer or assign this Agreement, the Franchise, the assets of the Franchise or Office or a controlling interest (as defined above), shall be subject to our right of first refusal which shall be exercised in the following manner:

(1) You and/or your Owners must provide us with a written notice setting forth (i) all of the terms and conditions of any *bona fide* offer relating to a proposed transfer or assignment (the purchase price and terms must reflect the bona fide price offered and not a value for any other property or rights), and (ii) all available information concerning the proposed transferee or assignee.

(2) Within sixty (60) days of our receipt of such notice and all accompanying information reasonably necessary to evaluate the offer (or, if we request additional information, within thirty (30) days after receipt of such additional information), we shall notify you and/or your Owners of one of the following:

a. We will exercise our right of first refusal as provided herein; or

b. We grant our consent to such transfer or assignment to the proposed assignee as designated in the notice; or

c. We do not exercise our right of first refusal and do not consent to a transfer or assignment to the proposed transferee or assignee.

(3) If we elect to exercise our right of first refusal: (a) our designee shall purchase the interests and/or assets proposed to be transferred or assigned on the same terms and conditions as set forth in the bona fide offer; provided, however, that our designee may substitute cash for any form of payment proposed in such offer and that our designee may deduct from the

purchase price any unpaid fees due to RE/MAX Regional or RE/MAX, LLC; (b) our designee's credit shall be equal to the credit of any proposed purchaser, and our designee shall have not less than ninety (90) days from the date we exercised our right of first refusal to consummate the transaction; and (c) our designee shall have the right to acquire from you and/or your Owners, for nominal consideration, and assignment of all of your rights, or your Owners' rights, under any lease or sublease covering the Premises.

(4) If we do not elect to exercise our right of first refusal and consent to the transfer or assignment, the proposed transferor or assignor shall, for a period of ninety (90) days, be free to transfer or assign to such proposed transferee or assignee upon the terms and conditions specified in the notice, subject to the requirements set forth in Section 12.D. If, however, the terms shall be materially changed, or if the ninety (90) day period expires, we shall again have the right of first refusal and the proposed transferor or assignor shall again be required to comply with this Section 12.H.

(5) Our right of first refusal shall in no way modify or diminish our right to withhold our consent to a transfer or assignment as set forth in Section 12.B.

13. TERMINATION OF THE FRANCHISE.

A. TERMINATION BY FRANCHISOR WITH CAUSE.

You will be deemed to be in material default of an essential condition of this Agreement in the event of the occurrence of any of the specific defaults listed below. You acknowledge and agree that the occurrence of any such material default will constitute just and good cause for termination of your rights under this Agreement, or any other franchise agreement between you or your Owners and RE/MAX Regional, and that our right to terminate this Agreement based on any such material default is reasonable.

B. TERMINATION BY FRANCHISOR WITHOUT NOTICE OR OPPORTUNITY TO CURE.

You will be in material default of an essential condition of this Agreement, and we have the right to terminate this Agreement, immediately and without providing you with notice or an opportunity to cure, upon the occurrence of any of the following events:

(1) You become insolvent, make an assignment for the benefit of your creditors of all or any part of the assets used in the Franchise, file a petition of bankruptcy, or such a petition is filed against you and not opposed by you;

(2) You are adjudicated a bankrupt or insolvent;

(3) A bill in equity or other proceeding for the appointment of a receiver of the Franchisee or other custodian for the Franchisee's business or assets is filed and consented to by the Franchisee; or a receiver and other custodian (permanent or temporary) of the Franchisee's business or assets, or any part thereof, is appointed by any court of competent jurisdiction;

(4) Proceedings for a composition with creditors under any state or federal law is initiated by or against you;

(5) Execution is levied against your business or assets, a suit to foreclose any lien or mortgage against you is filed and not dismissed within thirty (30) days or your real or personal property is sold after levy thereupon by any sheriff, marshal or constable; or

(6) You are dissolved.

C. TERMINATION BY FRANCHISOR WITH NOTICE BUT WITHOUT OPPORTUNITY TO CURE.

You will be in material default of an essential condition of this Agreement, and we have the right to terminate this Agreement, immediately and without providing an opportunity to cure, by giving you written notice of termination, stating the nature of the default, upon the occurrence of, or upon our becoming aware of, any of the following events:

(1) You are in default under Section 13.D and/or 13.E of this Agreement or in material default pursuant to any other agreement between you and us, RE/MAX, LLC or a RE/MAX Affiliate on two (2) or more occasions in any twelve (12) month period; or, after curing any default following notice pursuant to Section 13.D and/or 13.E, you commit the same default, whether or not such default is cured after notice;

(2) You fail to cure to our reasonable satisfaction, within twenty-four (24) hours after we have given you written notice, (i) any default, or (ii) any conduct by you or any of your Owners, any of your or your Owners' immediate family members, any Sales Associate or any other person affiliated with or represented as being affiliated with your Office, which, in our sole judgment, impairs or may impair the goodwill associated with the System or with the RE/MAX trade name, trademarks, service marks, logotypes or other commercial symbols;

(3) You or any of your Owners, any of your or your Owners' immediate family members, any Sales Associate or any other person affiliated with or represented as being affiliated with your Office, is arrested or is indicted for, convicted of or pleads no contest to a felony or any other criminal misconduct which is relevant to the operation of the Franchise; or if we have proof that any of the above has committed such a felony or engaged in any other criminal misconduct;

(4) You or any of your Owners, any of your or your Owners' immediate family members, Sales Associates or other persons affiliated with or represented as being affiliated with your Office, is arrested or is indicted for, convicted of or pleads no contest to a crime or offense of moral turpitude or engages in conduct or activity that we reasonably conclude is dishonest, illegal or which otherwise is likely to reflect adversely upon the reputation, public image, credibility, creditworthiness or goodwill of the Office, other RE/MAX offices, RE/MAX Affiliates, RE/MAX, LLC, us or the System;

(5) You fail to comply with any federal, state or local law applicable to the operation of the Franchise within ten (10) days after notification of noncompliance from RE/MAX Regional, RE/MAX, LLC or any applicable agency;

(6) You or any of your Owners has made any misrepresentations to us, or has omitted any material information, including but not limited to information bearing on your or your Owners' integrity or other qualities of character, in this Agreement, in your application for the rights granted by this Agreement, in the financial information provided by you and your Owners, or at any time during the Term of this Agreement, including the representations contained in Sections 8.O and 15.Z of this Agreement;

(7) There shall occur any material adverse change in the financial condition, business or prospects of the Franchise;

(8) You or your Owners fail to comply with any requirement, obligation, term or condition of any other franchise or other agreement between you or your Owners and us or any of our affiliates, and do not cure such default in accordance with the terms of such other agreement; or

(9) You or any of your Owners, or anyone affiliated with your Office, is determined pursuant to Executive Order 13224 to have committed acts of Terrorism or poses a significant risk of committing acts of Terrorism, or assists, sponsors or supports Terrorists or acts of Terrorism (as defined in Section 8.O), or the United States Foreign Corrupt Practices Act (as defined in Section 8.P), or otherwise violates any provisions of Section 8.O or Section 8.P.

D. TERMINATION BY FRANCHISOR WITH NOTICE AND TEN DAYS OPPORTUNITY TO CURE.

You will be in material default of an essential condition of this Agreement, and we have the right to terminate this Agreement by giving you written notice of termination, stating the nature of the default at least ten (10) days prior to the effective date of termination (the "Cure Period"), upon the occurrence of any of the following events. However, you may avoid termination by curing such default to our satisfaction within the Cure Period. If any such default is not cured within the Cure Period, this Agreement shall terminate without further notice to you immediately upon the expiration of the Cure Period.

These events of default are:

(1) You voluntarily abandon, surrender, transfer control of, or lose the right to occupy the Premises or fail to actively operate the Office for a period in excess of five (5) consecutive business days, unless your failure to do so is caused by fire, flood, earthquake or other similar causes beyond your reasonable control, as more fully set forth in Section 15.AA;

(2) Your or the Manager's, if any, Real Estate Broker License is suspended or revoked by the governing real estate commission, or if for any reason you fail to have a properly licensed real estate broker affiliated with the Office under whose license the

Franchise is conducted; or you or the Manager, if any, fail to conduct yourself/himself/herself according to the Code of Ethics of the National Association of Realtors, or you or the Manager, if any, engage in conduct that we conclude is unprofessional or unethical;

(3) You fail to pay when due any monies owed to us, to RE/MAX, LLC, or to any other person or entity as may be required by this Agreement in accordance with the terms of this Agreement;

(4) You or your Owners default under the terms of any promissory note executed in favor of us or RE/MAX, LLC;

(5) You fail to report to us all Sales Associates registered with the Office for any month; or

(6) You fail to comply with the requirements of Section 12.D in the event of death, incompetency or permanent disability.

This notice will advise you, and you hereby understand and agree, that if the default is not cured within ten (10) days, this Agreement automatically terminates at the end of such ten (10) days without further notice from us.

E. TERMINATION BY FRANCHISOR WITH NOTICE AND THIRTY DAYS OPPORTUNITY TO CURE.

Except as provided in Sections 13.A, 13.B, 13.C and 13.D of this Agreement, we have the right to terminate this Agreement by giving you written notice of termination, stating the nature of the default at least thirty (30) days prior to the effective date of termination (the "Cure Period"). However, you may avoid termination by curing such default to our satisfaction within the Cure Period. If any such default is not cured within the Cure Period, this Agreement shall terminate without further notice to you immediately upon the expiration of the Cure Period. You will be in material default hereunder for any failure to comply with any of the requirements imposed by this Agreement, as they may from time-to-time be supplemented in writing as permitted herein, or to carry out the terms of this Agreement in good faith. Such defaults include, but are not limited to, the following illustrative events:

(1) You and RE/MAX Regional, acting reasonably and in good faith, have not agreed on a location for the Office within ninety (90) days of the Agreement Date;

(2) You fail to open the Office and begin business operations in compliance with the terms and provisions of this Agreement within 180 days of the Agreement Date;

(3) Prior to the opening of the Office, (i) you or your Owners who are responsible for the Office, or the Manager, if any, fails to attend the mandatory Management Training Course conducted for new franchisees by RE/MAX, LLC prior to the opening of the Office; or (ii) you fail to submit a Business Plan to RE/MAX Regional;

EXHIBIT A

(4) You or your Owners sell, lease, convey, give away, subfranchise, sublicense, pledge, mortgage, assign, transfer, encumber, or otherwise dispose of any direct or indirect interest in this Agreement, the Franchise, all or a substantial portion of the assets of the Franchise or Office, or any "interest" (defined in Section 12 above) in violation of the provisions of Section 12 of this Agreement;

(5) You fail to satisfy and maintain your Quota as provided in Section 7 of this Agreement;

(6) You fail to comply with the recruiting and affiliation restrictions set forth in Section 7 of this Agreement;

(7) You or your Owners fail to comply with any other provision of this Agreement, or any standard, operating procedure, policy, guideline, Policy Directive or Operating Materials established by us or RE/MAX, LLC;

(8) You disclose or divulge Confidential Information contrary to the terms of this Agreement;

(9) You fail to permit us or our representatives to inspect your Office, interview Office personnel or audit your business and accounting records as provided for under this Agreement;

(10) You fail to timely comply with any records or reporting requirements (other than the required monthly reporting of Sales Associates) set forth in Section 10 of this Agreement;

(11) You are in default of any provision of any other agreement between (i) you; (ii) any of your Owners; or (iii) any business entity in which you or any of your Owners has a controlling interest, on the one hand, and RE/MAX Regional, RE/MAX, LLC or any other RE/MAX affiliate, on the other hand;

(12) You fail to complete a proper renewal at the expiration of the Term, as provided in Section 2.E of this Agreement;

(13) You fail to successfully participate in and pay for such training programs or business consulting services as we require; or

(14) You fail to obtain and maintain the insurance coverages required under Section 8.D of this Agreement.

This notice will advise you, and you hereby understand and agree, that if the default is not cured within thirty (30) days, this Agreement automatically terminates at the end of such thirty (30) days without further notice from us.

F. TERMINATION NOT EXCLUSIVE REMEDY.

Termination of this Agreement by us shall not be an exclusive remedy and shall not in any way affect the rights of RE/MAX Regional or RE/MAX, LLC to receive or collect fees or other amounts required to have been paid by you hereunder, to enforce the provisions of this Agreement against you or to sue for damages, seek and obtain injunctive relief, including ex parte temporary restraining orders, or to pursue any other legal or equitable remedy for a breach of this Agreement by you.

In lieu of terminating this Agreement as may be permitted herein, we, in our discretion, may allow you to continue operating the Franchise on a month-to-month basis only and we may thereafter terminate this Agreement at any time and for any reason upon ten (10) days' prior written notice to you. We may terminate this Agreement upon such ten (10) days' prior written notice to you even if you cured all defaults during the period when the Franchise was being operated on a month to month basis.

14. RIGHTS AND OBLIGATIONS OF RE/MAX REGIONAL AND FRANCHISE OWNER UPON TERMINATION OR EXPIRATION OF THE FRANCHISE.

A. PAYMENT OF AMOUNTS OWED TO RE/MAX REGIONAL AND RE/MAX, LLC.

You agree to pay us, RE/MAX, LLC within five (5) days after the effective date of termination or expiration of the Franchise, or at any later date that the amounts due to us are determined, all amounts owed to us and to RE/MAX, LLC which are then unpaid.

B. DE-IDENTIFICATION.

You and your Owners agree that after the termination or expiration of the Franchise you and your Owners will:

(1) immediately and clearly distinguish your operations from RE/MAX and the System, so as to avoid any possibility of confusion to the public, and not directly or indirectly at any time identify any business with which you are associated as being a current or former RE/MAX office or franchisee or otherwise use the System or hold yourself out to the public in any way as being or having been affiliated with us, RE/MAX, LLC or other RE/MAX Affiliates;

(2) immediately erase or obliterate from your letterhead, stationery, printed matter, advertising websites and web pages (including without limitation, in visual content, hyperlinks, source code, meta tags, or third-party directory listings), or other materials the RE/MAX Marks and all words and designations indicating that you are or were associated or affiliated with us, RE/MAX, LLC or other RE/MAX Affiliates;

(3) immediately take any action that may be required to cancel all trade, fictitious or assumed names or equivalent registrations which contain any reference to any RE/MAX Mark, including, without limitation, any Internet or World Wide Web listing or address;

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(4) immediately notify your state real estate commission, your local board of REALTORS®, the National Association of REALTORS®, and your clients that your Office is no longer in existence and, unless you have affiliated with another RE/MAX office, that you are no longer affiliated with the RE/MAX organization;

(5) promptly assign all telephone numbers listed for the Office to us, or our designee, with no forwarding message or other information that would steer callers from RE/MAX Regional or its designee, and immediately instruct the telephone company in writing to redirect all calls to such numbers to us or in accordance with our directions. You hereby direct each such telephone company or directory listing agency to accept your signature on this Agreement as your signed authorization and direction to them to assign numbers and re-direct calls as described above, and to discontinue as soon as practicable any and all on-line or printed phone directory advertising or listings that refer to the Office, or, as directed by us or RE/MAX, LLC, to modify same to include other phone numbers. You acknowledge and agree that by executing this Agreement, you grant us a power of attorney that enables us to take, on your behalf, any and all actions required to effectuate the provisions of Section 4.B and this Section 14.B(5);

(6) immediately assign and transfer all of the RE/MAX Formative Domain Names or other domain names that include the RE/MAX Marks (or any variation thereof) that you register, and all those that your Sales Associates have registered, to us or our designee or, if we so direct, to deactivate and delete from the domain name registrar's records some or all of such domain names or take such actions regarding such domain name(s) as RE/MAX Regional or RE/MAX, LLC may direct;

(7) immediately take any action that may be required to cancel, or at our request transfer to us or our designee, all pseudonyms, logins, or identifiers (including but not limited to vanity license plates, user names, instant messaging or social networking screen names or user names, or e-mail addresses) that contain any reference to any RE/MAX Marks;

(8) refrain from adopting or using in any manner, or for any purpose, the RE/MAX Marks, including without limitation: (i) the RE/MAX red-over-white-over-blue trade dress or any other trade dress that on review is deemed by RE/MAX, LLC to be confusingly similar to the RE/MAX trade dress; or (ii) the terms "RE/MAX," "REMAX" or "MAX" or any other term that begins with the prefix "RE" or ends in the suffix "MAX" or any other term that on review is deemed by RE/MAX, LLC to create a possibility of confusion or question regarding you or your Owners' affiliation with or sponsorship or endorsement by the RE/MAX organization. You and your Owners further agree to refrain from the use of any "for sale" sign, trade dress or identity scheme comprised of lateral elements in red and blue separated by a white element and from the use of a design comprised of a three horizontal bar design, from the use of a hot air balloon or a hot air balloon symbol, and from use of the term "Above the Crowd" or any other phrase beginning with "Above" or ending with "Crowd;"

(9) refrain from referring to designations, certifications, awards or recognition that we, RE/MAX, LLC or any of our related or affiliated companies may have granted to

you or your Owners at any time during your affiliation with the RE/MAX Network in any form of advertising or promotion;

(10) at all times for a period of three (3) years following termination or expiration keep us advised of the current business and residential address(es) and telephone number(s) of you and your Owners, as well as the business address and telephone number of all such persons' employers, if any; and

(11) if you retain possession of the Premises, or if you do not, prior to vacating the Premises, completely remove or modify, at your sole expense, any signage bearing the RE/MAX Marks and any part of the interior and exterior decor that we deem necessary to disassociate the Premises from the appearance of a RE/MAX office. If you do not take the actions we request within ten (10) days after notice from us, we have the right to enter the Premises, if you retain them, or to arrange entry with the owner of the Premises if you do not retain them, and make the required changes at your expense, and you agree to reimburse us for those expenses on demand.

C. CONFIDENTIAL INFORMATION.

You and your Owners agree that on termination or expiration of the Franchise you will immediately cease to use, but maintain the confidentiality of, any of the Confidential Information, Operations Materials, procedures, techniques, all other manuals, forms, rosters or other materials (and all of any such item), regardless of format, acquired from us or RE/MAX, LLC and agree not to use, sell, convey, display, share, in whole or in part, any of such items for any purpose. You and your Owners further agree to return all such items or destroy them in a secure manner.

D. CONTINUING OBLIGATIONS.

All obligations of this Agreement (whether yours or ours) which expressly or by their nature are intended to survive the expiration or termination of this Agreement will continue in full force and effect after and notwithstanding their expiration or termination until such obligations are satisfied in full or by their nature expire.

E. MONETARY OBLIGATIONS NOT RELEASED.

Termination or expiration of this Agreement shall not terminate any monetary obligation that you may owe to us or RE/MAX, LLC or to any other person or entity as may be required by this Agreement, and shall not entitle you to any refund of any monies previously paid pursuant to the terms of this Agreement.

F. RIGHT TO MEET WITH SALES ASSOCIATES.

As provided in Section 5.A of this Agreement, and to facilitate an orderly and efficient transition and to preserve the goodwill associated with the RE/MAX name and RE/MAX Marks in the event of termination or expiration of this Agreement, you expressly agree that we shall have the right to contact and communicate personally with any or all of your Sales Associates to solicit and/or to discuss with them their options for continued affiliation with other RE/MAX

offices and/or opportunities to purchase a RE/MAX franchise:

(i) 180 days prior to expiration of this Agreement if you elect not to renew (either by notifying us of your intent not to renew or by failing to timely provide us with notice of your intentions regarding renewal), or if you have received notice from us that your franchise will not be renewed;

(ii) upon expiration of this Agreement if you timely elect to renew, but have failed to complete timely a proper renewal as required by Section 2.E. of this Agreement;

(iii) in the case of termination, immediately after notice of default has been delivered to you (including during any period of time you may have to cure defaults); or

(iv) immediately after we have determined that you intend to terminate or have terminated your franchise.

G. DAMAGES.

Notwithstanding anything contained herein, in addition to any other remedies provided for herein or under applicable law, you and your Owners jointly and severally agree that after the passage of a ten (10)-day period following the termination or expiration of this Agreement, the sum of $500 shall be paid to us for each day you fail to perform your obligations under Sections 14.B, C, and D hereof, which monetary amount shall be regarded as liquidated damages and not as a penalty. This section does not limit or affect in any way your or your Owner's liability for trademark infringement, unfair competition, or breach of contract nor affect or limit the right of RE/MAX Regional or RE/MAX, LLC to seek or obtain injunctive relief or specific performance, or other extraordinary relief.

H. FUTURE BUSINESS AND RESIDENCE ADDRESSES.

For three (3) years following the termination or expiration of this Agreement, you agree to advise us of your current business and residential addresses and telephone numbers.

I. POST TERMINATION NON COMPETITION AGREEMENT.

You agree that upon the termination, expiration, or non-renewal of this Agreement, neither you nor your Owners, officers, or guarantors, or any of your or their Immediate Family Members (as defined in Section 5.F) will, for a period of one (1) year from the effective date of such termination, expiration, or non-renewal, become an officer, director, shareholder, member, licensee, partner or manager of, or otherwise directly or indirectly operate, manage, own or have any ownership interest in any business that is a licensee or franchisee of any franchising organization or network that competes with RE/MAX Regional or RE/MAX, LLC. Nothing in this Section shall be deemed to restrict affiliation as a real estate agent with a franchisee of any franchising organization or network.

J. ERRORS AND OMISSIONS INSURANCE.

You agree that after the termination or expiration of the Franchise you will purchase an extended reporting period endorsement covering a period of three (3) years from the date of termination of this Agreement (as set forth in more detail in Section 8.D.).

15. CONSTRUCTION OF AGREEMENT AND ENFORCEMENT.

A. INVALID PROVISIONS; SUBSTITUTION OF VALID PROVISIONS.

If any applicable law or court order requires a greater advance notice of the termination or non-renewal of this Agreement than is required under this Agreement, or the taking of some other action which is not required by this Agreement, the notice and/or other action required by such applicable law or such court order shall apply. If any portion or provision of this Agreement or any specification, standard, operating procedure, policy or guideline we prescribe is inconsistent with, or rendered invalid or unenforceable by, any applicable law or court order, the inconsistent, invalid or unenforceable portion or provision shall be modified so as to be valid and enforceable. If such portion or provision of this Agreement cannot be saved, it shall be stricken and its deletion shall not affect the validity or enforceability of the other portions or provisions of this Agreement or such specification, standard, operating procedure, policy or guideline.

B. UNILATERAL WAIVER OF OBLIGATIONS.

Either of us may, by written notice, unilaterally waive or reduce any obligation or restriction of the other party under this Agreement. The waiver or reduction may be revoked at any time for any reason.

C. WRITTEN CONSENTS FROM RE/MAX REGIONAL.

Whenever this Agreement requires our advance approval or consent, you agree to make a timely written request for it. Our approval or consent will not be valid unless it is in writing. Except where this Agreement expressly obligates us to reasonably approve or not unreasonably withhold our approval of any of your actions or requests, we have the absolute right to refuse any request by you or to withhold our approval of any action or omission by you.

Whenever we or RE/MAX, LLC have reserved in this Agreement a right to take or withhold an action, or to grant or decline to grant you a right to take or omit an action, except as otherwise expressly and specifically provided in this Agreement, we and RE/MAX, LLC may make decisions or exercise rights on the basis of the information readily available to us, and our judgment of what is in our best interests and/or in the best interests of the RE/MAX Network, at the time our decision is made, shall be deemed to be reasonable and enforceable, without regard to whether other reasonable or even arguably preferable alternative decisions could have been made by us and without regard to whether our decision or the action we take promotes our financial or other individual interest.

D. NO GUARANTEES.

If in connection with this Agreement we provide to you any waiver, approval, consent or suggestion, or if we neglect or delay our response or deny any request for any of those, we will not be deemed to have made any warranties or guarantees which you may rely on, and will not assume any liability or obligation to you.

E. NO WAIVER.

If at any time we do not exercise a right or power available to us under this Agreement or do not insist on your strict compliance with the terms of the Agreement, or if there develops a custom or practice which is at variance with the terms of this Agreement, we will not be deemed to have waived our right to demand exact compliance with any of the terms of this Agreement at a later time. Similarly, our waiver of any particular breach or series of breaches under this Agreement or under any other agreement between us and any franchisee will not affect our rights with respect to any later breach. It will also not be deemed to be a waiver of any breach of this Agreement for us to accept payments which are due to us under this Agreement.

F. CUMULATIVE REMEDIES.

The rights and remedies specifically granted to us by this Agreement will not be deemed to prohibit us from exercising any other right or remedy provided under this Agreement or permitted by law or equity. Our right to terminate this Agreement in accordance with Section 13 shall be deemed to permit us to elect remedies other than termination.

G. SPECIFIC PERFORMANCE; INJUNCTIVE RELIEF.

You agree that we may, without being required, to post a bond or other security, and, even if this Agreement has been terminated or has expired, obtain temporary and permanent injunctions and orders of specific performance (1) to enforce the provisions of this Agreement relating to your use of the RE/MAX Marks and your non-disclosure and non-competition obligations under this Agreement, (2) to prohibit any act or omission by you or your agents or employees that constitutes a violation of any applicable law, ordinance or regulation, constitutes a danger to the public, or may impair the goodwill associated with the RE/MAX Marks, the System, us, other RE/MAX Affiliates or RE/MAX, LLC, or (3) to prevent any other irreparable harm to our interests.

H. COSTS AND LEGAL FEES.

In connection with any failure by you or your Owners to comply with this Agreement, you shall reimburse us and/or RE/MAX, LLC, upon demand, for the costs and expenses incurred by us and/or RE/MAX, LLC as a result of such failure, including, without limitation, accountants', attorneys', attorneys' assistants and expert fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for, in contemplation of or in connection with the filing of any proceeding to enforce this Agreement. This provision does not limit in any way our or RE/MAX, LLC's right to seek any other costs and expenses which may be governed by applicable court rules and claimable in the context of a legal proceeding. If you or your Owners initiate legal proceedings

against us, and if you or your Owners do not prevail in a court of competent jurisdiction in obtaining the relief you or your Owners were seeking in such legal proceedings, then you or your Owners shall reimburse us for the costs and expenses incurred by us as a result of such legal proceedings, including, without limitation, accountants', attorneys', attorneys' assistants and expert fees, cost of investigation and proof of facts, court costs, other litigation expenses and travel and living expenses, whether incurred prior to, in preparation for, in contemplation of or in connection with such legal proceedings. This provision shall survive termination of this Agreement.

I. WAIVER OF PUNITIVE DAMAGES AND JURY TRIAL.

THE PARTIES HEREBY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO OR CLAIM FOR ANY AGGRAVATED, PUNITIVE, OR EXEMPLARY DAMAGES AGAINST THE OTHER AND AGREE THAT IN THE EVENT OF A DISPUTE BETWEEN THEM EACH WILL BE LIMITED TO THE RECOVERY OF ONLY ACTUAL COMPENSATORY DAMAGES. THE PARTIES IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER OF THEM. THE PARTIES ACKNOWLEDGE THAT THIS SECTION 15.I MAY NOT BE ENFORCEABLE AS TO CERTAIN CLAIMS, PURSUANT TO INDIANA CODE 23-2-2.7-1(10).

J. WAIVER OF CLASS ACTION.

TO THE EXTENT PERMITTED BY LAW, YOU AGREE THAT ANY JUDICIAL PROCEEDING WILL BE CONSIDERED AS TO ITS FACTS AND WILL NOT BE COMMENCED OR PROCEEDED WITH AS A CLASS ACTION. YOU AND EACH OF YOUR OWNERS WAIVE ANY RIGHT TO PROCEED AGAINST US AND/OR RE/MAX, LLC BY WAY OF CLASS ACTION.

K. GOVERNING LAW/CONSENT TO JURISDICTION.

EXCEPT TO THE EXTENT GOVERNED BY THE UNITED STATES TRADEMARK ACT OF 1946 (LANHAM ACT, 15 U.S.C. §§ 1051 ET SEQ.), THIS AGREEMENT, THE FRANCHISE, AND ALL CLAIMS ARISING FROM THE RELATIONSHIP BETWEEN THE PARTIES WILL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF INDIANA (WITHOUT REFERENCE TO ITS CHOICE OF LAW AND CONFLICT OF LAW RULES). YOU AGREE TO INSTITUTE ANY ACTION ARISING OUT OF OR RELATING IN ANY MANNER TO THIS AGREEMENT IN A STATE OR FEDERAL COURT OF GENERAL JURISDICTION IN THE COUNTY OF MARION, STATE OF INDIANA AND YOU IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS AND WAIVE ANY OBJECTION YOU MAY HAVE TO EITHER THE EXCLUSIVE JURISDICTION OR VENUE OF SUCH COURT. YOU FURTHER AGREE THAT WE MAY INSTITUTE ANY ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION.

EXHIBIT A

L. BINDING EFFECT.

This Agreement is binding on and will inure to the benefit of our successors and assigns and will be binding on and inure to the benefit of your successors and assigns, and if you are an individual, on and to your heirs, executors and administrators.

M. MODIFICATION OF FRANCHISE AGREEMENT.

This Agreement may not be modified, amended or altered except by an instrument signed by all of the parties to this Agreement. Notwithstanding the preceding sentence, you understand and agree that we or RE/MAX, LLC may, from time-to-time, issue new (or amend or modify existing) standards, operating procedures, policies and guidelines pertaining to the System. We or RE/MAX, LLC have the right to operate, develop and change the System in any manner that is not specifically precluded by this Agreement. Whenever we or RE/MAX, LLC have reserved in this Agreement a right to take or withhold an action, or to grant or decline to grant you a right to take or omit an action, except as otherwise expressly and specifically provided in this Agreement, we and RE/MAX, LLC may make decisions or exercise rights on the basis of the information readily available to us, and our judgment of what is in our best interests and/or in the best interests of our franchise network, at the time our decision is made, shall be deemed to be reasonable and enforceable, without regard to whether other reasonable or even arguably preferable alternative decisions could have been made by us and without regard to whether our decision or the action we take promotes our financial or other individual interest. In addition, you agree that you will execute any amendments or modifications to this Agreement as may from time-to-time be required as a result of changes in governing law.

N. NO LIABILITY TO OTHERS; NO OTHER BENEFICIARIES.

We will not, because of this Agreement or by virtue of any approvals, advice or services provided to you, be liable to any person or entity that is not a party to this Agreement. You understand that you are not a third party beneficiary of any other franchise agreement between us and other RE/MAX franchisees and that you have no independent right to enforce the terms of, or require performance under, any other franchise agreement.

O. CONSTRUCTION.

All headings of the various Sections of this Agreement are for convenience only and do not affect the meaning or construction of any provision. All references in this Agreement to masculine, neuter or singular usage will be construed to include the masculine, feminine, neuter or plural, wherever applicable.

P. JOINT AND SEVERAL LIABILITY.

If the Franchise Owner under consists of more than one (1) person or Business Entity, or a combination thereof: (i) the obligation and liabilities to RE/MAX Regional of each such person or Business Entity are joint and several; (ii) a right under the Agreement exercised by any one of them is deemed to be exercised jointly; and (iii) a representation, warranty, or undertaking made by one (1) person or Business Entity is deemed to be a representation made by each of them.

Q. MULTIPLE ORIGINALS.

This Agreement may be executed using multiple copies, each of which will be deemed an original.

R. TIMING IS IMPORTANT.

Time is of the essence of this Agreement. ("Time is of the essence" is a legal term that emphasizes the strictness of time limits. In this case, it means it will be a material breach of this Agreement to fail to perform any obligation within the time required or permitted by this Agreement.)

S. INDEPENDENT PROVISIONS.

The provisions of this Agreement are deemed to be severable. In other words, the parties agree that each provision of this Agreement will be construed as independent of any other provision of this Agreement.

T. FRANCHISEE MAY NOT WITHHOLD PAYMENT.

You agree to pay all amounts due under this Agreement without deduction, set-off or abatement. You further agree that you will not, on alleged grounds of non-performance by us of any of our obligations under this Agreement, withhold payment of any fees or other amounts due to us, RE/MAX, LLC or affiliates of us or RE/MAX, LLC.

U. RELEASE OF PRIOR CLAIMS.

By executing this Agreement, you and your Owners, individually and on behalf of your heirs, legal representatives, successors and assigns, and each assignee of this Agreement by accepting assignment of the same, hereby forever waives, releases and discharges, and agrees to indemnify, defend and hold harmless, RE/MAX Regional and RE/MAX, LLC and their respective affiliated corporations, partnerships, or other entities, and each of their respective present and former officers, managers, directors, stockholders, partners, employees, agents, representatives and servants and subsidiaries from and against any and all claims, demands, actions or causes of action, or any loss, damage, cost or expense, including attorneys fees, arising from or out of any claim, relating to or arising under any franchise agreement or other agreement between the parties and executed prior to or on the Agreement Date, or the franchise relationship previously existing between the parties, including but not limited to, any and all claims, whether presently known or unknown, suspected or unsuspected, arising under the franchise, securities, antitrust or other laws of the United States or of any State.

V. ACTIONS BARRED.

EXCEPT FOR CERTAIN CLAIMS AND ACTIONS AS SET FORTH BELOW, ANY AND ALL CLAIMS AND ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, THE OFFER AND SALE OF THE FRANCHISE COVERED BY THIS AGREEMENT), THE RELATIONSHIP BETWEEN US AND YOU OR YOUR OPERATION OF THE FRANCHISE, BROUGHT BY ANY PARTY

TO THIS AGREEMENT AGAINST THE OTHER, SHALL BE COMMENCED WITHIN ONE (1) YEAR FROM THE OCCURRENCE OF THE ACTS OR OMISSIONS GIVING RISE TO SUCH CLAIM OR ACTION, OR SUCH CLAIM OR ACTION SHALL BE BARRED. THE FOREGOING ONE (1) YEAR LIMITATION PERIOD WILL NOT APPLY TO CLAIMS OR ACTIONS BY RE/MAX, LLC OR US FOR MONIES DUE UNDER THIS AGREEMENT, CLAIMS OR ACTIONS RELATING TO THE RE/MAX MARKS, OR THE TRADE NAMES, COPYRIGHTS, TRADE SECRETS OR CONFIDENTIAL INFORMATION BELONGING TO US OR RE/MAX, LLC OR CLAIMS OR ACTIONS RELATING TO THE POST-TERMINATION OBLIGATIONS SET FORTH IN SECTION 14 OF THIS AGREEMENT.

W. AUTHORIZATION TO COMMUNICATE ELECTRONICALLY/ PROMPT RESPONSE REQUIRED.

By executing this Agreement, you authorize RE/MAX Regional and RE/MAX, LLC, as well as their affiliates and approved suppliers, to communicate with you electronically, including via electronic mail and facsimile and, unless a written communication is required, to communicate with you via telephone, notwithstanding whether any or all of your Office telephone numbers appear on a federal or state Do-Not-Call registry. You understand and acknowledge that it is critical to the efficient and successful administration of the franchise relationship that you promptly respond to all communication from us. Accordingly, you agree to respond within five (5) business days to each communication from us.

X. NOTICES AND PAYMENTS.

All written notices and reports permitted or required to be delivered by the provisions of this Agreement will be deemed so delivered: (i) at the time delivered by hand to the recipient party; (ii) one (1) business day after transmission by facsimile, electronic mail, or other reasonably reliable electronic communications system; (iii) one (1) business day after being placed in the hands of a commercial courier service for overnight delivery; or (iv) three (3) business days after placement in the United States Mail by Registered or Certified Mail, Return Receipt Requested, postage prepaid; and all such notices and reports must be addressed to the party to be notified at its most current principal business address of which the notifying party has been notified in writing. All payments and reports required by this Agreement must be sent to us or RE/MAX, LLC at the address to which you are notified from time-to-time, or to such other persons and places as we may direct from time-to-time.

Y. CANCELLATION OF PRIOR UNDERSTANDINGS; ENTIRE AGREEMENT.

This Agreement expresses fully the understanding by and between the parties, and all prior understandings, agreements, commitments, conditions, warranties and representations of any kind, oral or written, as to the Franchise (except as to information and representations submitted by you to us in the application to purchase the Franchise, including, but not limited to, financial statements, references, etc. which shall be deemed to be a part of this Agreement) are canceled and null, void and of no effect. Any previous matter, presently covered within this Agreement, is hereby superseded and canceled with no further liabilities or obligations of the parties with respect to such matter, except as to any monies due and unpaid between the parties

to this Agreement at the time of execution of this Agreement. Notwithstanding the foregoing, nothing in this Agreement is intended to disclaim the representations we made in the franchise disclosure document that we furnished to you.

Z. ACCURACY OF REPRESENTATIONS.

Franchisee and its Owners represent and warrant to us and RE/MAX, LLC that all statements, documents, materials, and information submitted to us, including the application for the rights granted by this Agreement, are true, correct and complete in all material respects, and there have been no material omissions. You agree to promptly advise us of any material change in the information or statements submitted to us. You acknowledge and understand that we and RE/MAX, LLC have entered into this Agreement in reliance on the statements and information submitted to us by Franchisee and its Owners, and that any material breach, inaccuracy or omission is grounds for us to terminate this Agreement.

AA. FORCE MAJEURE.

Neither party shall be deemed to be in breach of this Agreement if a party's failure to perform its obligations results from acts of god, fires, strikes, war, terrorism, riot, governmental laws or regulations, or any other similar event or cause. Any delay resulting from any of these causes will extend performance accordingly or excuse performance in whole or in part as may be reasonable, except that none of these causes shall excuse payments of amounts owed at the time of such occurrence.

16. ACKNOWLEDGMENTS.

You expressly acknowledge and accept the following:

(1) YOU RECEIVED FROM US A RE/MAX FRANCHISE DISCLOSURE DOCUMENT AS REQUIRED BY LAW AT LEAST FOURTEEN (14) CALENDAR DAYS PRIOR TO (i) THE EXECUTION OF THIS OR ANY OTHER BINDING AGREEMENT AND (ii) THE PAYMENT OF ANY CONSIDERATION TO US. YOU ALSO RECEIVED THIS AGREEMENT WITH ALL BLANKS COMPLETED AT LEAST SEVEN (7) CALENDAR DAYS PRIOR TO THE EXECUTION OF THIS AGREEMENT;

(2) YOUR SUCCESS IN OWNING AND OPERATING A RE/MAX REAL ESTATE SERVICES BUSINESS IS SPECULATIVE AND WILL DEPEND ON MANY FACTORS INCLUDING, TO A LARGE EXTENT, YOUR INDEPENDENT BUSINESS ABILITY AND PERSONAL EFFORTS. YOU FURTHER AGREE THAT YOU, ONE OF YOUR PRINCIPAL OWNERS, OR SUCH VALIDLY LICENSED REAL ESTATE BROKER AS YOU SELECT TO MANAGE THE OFFICE, WILL BE RESPONSIBLE FOR, AND INTENDS TO DEVOTE BEST EFFORTS AND FULL TIME TO, THE MANAGEMENT AND DEVELOPMENT OF THE OFFICE;

(3) NEITHER WE NOR RE/MAX, LLC HAVE GUARANTEED ANY RESULTS TO YOU AND CANNOT, EXCEPT UNDER AND TO THE EXTENT OF THE

TERMS OF THIS AGREEMENT, EXERCISE CONTROL OVER YOUR BUSINESS;

(4) YOU DID NOT RECEIVE FROM RE/MAX REGIONAL ORAL OR WRITTEN INFORMATION CONTRARY TO THE INFORMATION CONTAINED IN THE RE/MAX FRANCHISE DISCLOSURE DOCUMENT AND THIS AGREEMENT;

(5) YOU DID NOT RECEIVE ORAL OR WRITTEN EARNINGS CLAIMS INFORMATION AND HAVE NOT RELIED ON ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THE POTENTIAL SUCCESS OF THE BUSINESS VENTURE CONTEMPLATED BY THIS AGREEMENT;

(6) WE HAVE ENCOURAGED YOU TO SEEK LEGAL AND/OR OTHER PROFESSIONAL GUIDANCE AND ADVICE PRIOR TO SIGNING THIS AGREEMENT AND HAVE ENCOURAGED YOU TO CONTACT EXISTING RE/MAX FRANCHISEES TO GAIN A BETTER UNDERSTANDING OF THE REQUIREMENTS AND BENEFITS OF OWNING A RE/MAX OFFICE FRANCHISE;

(7) YOU HAVE HAD A FULL OPPORTUNITY TO REVIEW THE DISCLOSURE DOCUMENT AND THIS AGREEMENT AND RELATED AGREEMENTS PROVIDED BY US AND UNDERSTAND THE TERMS, CONDITIONS AND OBLIGATIONS OF THIS AGREEMENT;

(8) NO REPRESENTATIONS OR PROMISES HAVE BEEN MADE BY US OR RE/MAX, LLC TO INDUCE YOU TO ENTER INTO THIS AGREEMENT EXCEPT AS SPECIFICALLY INCLUDED IN THIS AGREEMENT;

(9) YOU HAVE NOT RELIED ON ANY STATEMENTS ABOUT US, RE/MAX, LLC OR THE FRANCHISE OTHER THAN THOSE CONTAINED IN THE DISCLOSURE DOCUMENT IN MAKING YOUR DECISION TO SIGN THIS AGREEMENT; AND

(10) YOU HAVE DEALT IN MANY VARIED BUSINESS TRANSACTIONS IN THE PAST WHICH HAVE BEEN OF GREATER COMPLEXITY THAN THIS TRANSACTION, AND THAT YOU ARE NOT PURCHASING A RE/MAX FRANCHISE FOR SPECULATIVE PURPOSES.

EXHIBIT A

17. **SUBMISSION OF AGREEMENT.**

THE SUBMISSION OF THIS AGREEMENT TO YOU DOES NOT CONSTITUTE AN OFFER AND THIS AGREEMENT SHALL NOT BE BINDING ON US UNLESS AND UNTIL IT IS ACCEPTED BY US; THAT IS, SIGNED BY OUR AUTHORIZED OFFICER AND RETURNED TO YOU.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

RE/MAX OF INDIANA
LIMITED PARTNERSHIP
dba RE/MAX INTEGRA, Midwest

By: P&S Enterprise, Inc.,
its General Partner

By: _____
David Linger
Title: Regional Director

9963 Crosspoint Blvd.
STREET ADDRESS

Indianapolis, Indiana 46256
CITY, STATE, ZIP

September 25, 2014
DATE

FRANCHISEE*
Veritas Ventures, LLC

By: _____
James E. Dulin II
Title: Managing Member

200 S. Rangeline Road
STREET ADDRESS

Carmel, Indiana 46032
CITY, STATE, ZIP

September 25, 2014
DATE

*Franchisee and all Owners must sign and date this page.

EXHIBIT A

GUARANTY AND ASSUMPTION OF OBLIGATIONS

THIS GUARANTY AND ASSUMPTION OF OBLIGATIONS (this "Guaranty") relates to that certain Franchise Agreement of even date herewith (the "Agreement") by and between RE/MAX of Indiana Limited Partnership dba RE/MAX INTEGRA, Midwest ("we", "us", or "RE/MAX Regional") and Veritas Ventures, LLC ("Franchisee") and is given this 25th day of September, 2014, by the following individual: James E. Dulin II (the "Guarantors" or "you").

In consideration of, and as an inducement to, the execution of the Agreement by us, each of the undersigned (each, a "Guarantor") hereby personally and unconditionally (a) guarantees to RE/MAX Regional and to RE/MAX, LLC, and their successors and assigns, for the Term of the Agreement and thereafter as provided in the Agreement, the full and punctual payment and performance of each and every undertaking, agreement and covenant set forth in the Agreement; and (b) agrees to be personally bound by, and personally liable for the breach of, each and every provision in the Agreement, both monetary obligations and obligations to take or refrain from taking specific actions or to engage or refrain from engaging in specific activities, including without limitation the provisions of Sections 5.E and 5.F and Section 14 of the Agreement. Any married person who signs this Guaranty hereby expressly agrees that recourse under this Guaranty may be had against his or her separate property, marital property and community property.

Each Guarantor agrees that: (1) his or her direct and immediate liability under this Guaranty shall be joint and several; (2) he or she shall render any payment or performance required under the Agreement upon demand if Franchisee fails or refuses punctually to do so; (3) such liability shall not be contingent or conditioned upon pursuit by us of any remedies against you, Franchisee or any other person; (4) such liability shall not be diminished, relieved or otherwise affected by an extension of time, credit or other indulgence or forbearance which we may from time-to-time grant to him or her, to Franchisee, or to any other person, including without limitation the acceptance of any partial payment or performance, or the compromise or release of any claims, none of which shall in any way modify or amend this Guaranty, which shall be continuing and irrevocable; and (5) he or she is bound by the "Release of Prior Claims" provision in Section 15.U of the Agreement; (6) he or she has established adequate means of obtaining from Franchisee on a continuing basis information regarding Franchisee's financial condition and agrees to keep adequately informed from such means of any facts, events or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, RE/MAX Regional shall have no obligation to disclose to Guarantor any information (including any indulgences or forbearances granted to Franchisee or any other person) or documents acquired by Franchisee in the course of RE/MAX Regional's relationship with Franchisee; and (7) the terms of this Guaranty and Assumption of Obligations shall survive the termination or expiration of the Agreement and shall continue in full force and effect subsequent to and notwithstanding such termination or expiration until they are satisfied in full.

Each Guarantor waives all rights to payments and claims for reimbursement or subrogation which he or she may have against you, Franchisee, or us arising as a result of each Guarantor's execution of and performance under this Guaranty and waives any right he or she may have to revoke this Guaranty until it is satisfied in full. Each Guarantor further waives any

defense to liability arising from: (a) any act or omission by which RE/MAX Regional directly or indirectly discharges Franchisee on any undertaking, agreement or covenants set forth in the Agreement or which increases the probability or amount of Guarantor's liability hereunder; (b) RE/MAX Regional's failure to enforce or delay in enforcing its rights under the Agreement; or (c) any modification or change of any terms of the Agreement or any grant of indulgence or forbearances by RE/MAX Regional.

Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

IN WITNESS WHEREOF, each of the undersigned has hereunto affixed his or her signature on the same day and year as of the Agreement was executed.

GUARANTOR(S)*

James E. Dulin II 9-25-2014

*All Owners must sign and date this page.

EXHIBIT A

EXHIBIT A

TO THE FRANCHISE AGREEMENT

Description and Map of Approved Location-Only Office Location

200 South Rangeline Road, Carmel, Indiana 46032

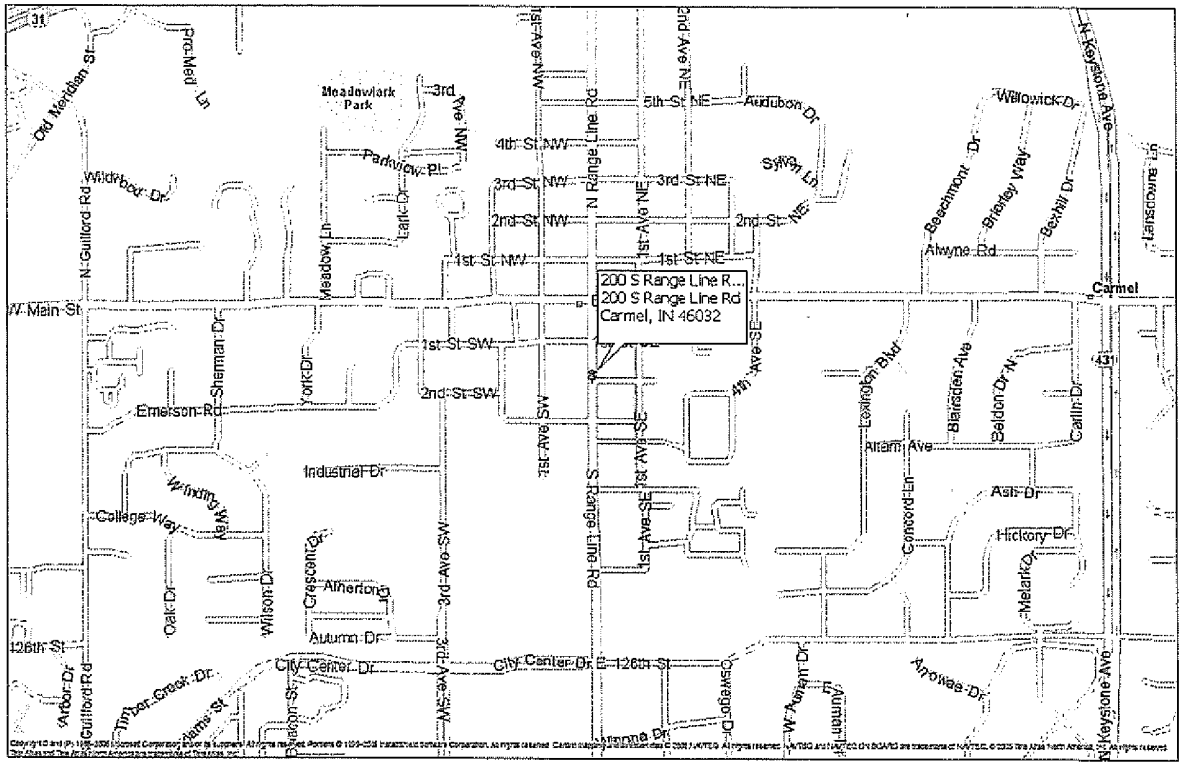

EXHIBIT B
TO THE FRANCHISE AGREEMENT

Management Fee and Promotion Fee

1. Effective on the date specified and thereafter throughout the applicable time period, the monthly Management Fee and Promotion Fee may be increased as follows:

DATE	MANAGEMENT FEE	PROMOTION FEE
January 1, 2014	$151.00	$145.00
January 1, 2015	$156.00	$150.00
January 1, 2016	$161.00	$155.00
January 1, 2017	$166.00	$160.00
January 1, 2018	$171.00	$165.00

2. Notwithstanding the provisions of Section 1 hereof, if the "all items" components of the Indianapolis, Indiana area Consumer Price Index (the "CPI") should, between any two consecutive dates specified in Section 1 hereof, rise by an amount which, if applied to the earlier of the two dates, would result in a higher Management Fee or Promotion Fee to be payable in respect of the second of such dates, then such higher fee shall be payable. If it is not determined until later than the second of such dates that the CPI has so risen then, upon written notice from RE/MAX Regional to you, an appropriate adjustment shall apply prospectively following such determination. The Management Fee and Promotion Fee for all subsequent years shall also be adjusted to reflect any increase in the CPI during any previous year. Notwithstanding the preceding language, the Management Fee and Promotion Fee may be adjusted from time-to-time upon sixty (60) days prior written notice from RE/MAX Regional to you if reasonably necessary, as determined by RE/MAX Regional, to enhance the System. Any adjustment in the Management Fee or the Promotion Fee will be instituted on a system wide basis to the extent possible.

3. The determination of whether the CPI has risen so as to justify an increase in the Management Fee and Promotion Fee as contemplated by Section 2 hereof shall be made by RE/MAX Regional. Unless and until RE/MAX Regional notifies you that such an increase in the Management Fee and Promotion Fee is to be made, the Management Fee and Promotion Fee payable shall be that specified in Section 1 hereof.

EXHIBIT A

EXHIBIT C
TO THE FRANCHISE AGREEMENT

FRANCHISE AGREEMENT
OWNERSHIP AND MANAGEMENT INFORMATION

NAMES AND ADDRESSES OF SOLE PROPRIETOR, PARTNERS, SHAREHOLDERS, MEMBERS, DIRECTORS AND PRINCIPAL OFFICERS, AS APPLICABLE

1. If you are a sole proprietorship, list below the name, residence address and telephone number of the sole owner:

_____

_____

_____

_____

2. If you are a partnership, list below the names, residence addresses and telephone numbers and respective percentage ownership interests in the partnership of each partner (please identify the managing partner) and submit a copy of the partnership agreement, if any, to RE/MAX INTEGRA, Midwest (if more space is required, attach additional sheets hereto):

a. _____
_____
_____
_____ __%

b. _____
_____
_____
_____ __%

c. _____
_____
_____
_____ __%

d. _____
_____
_____
_____ __%

EXHIBIT A

3. If you are a corporation or limited liability company, list below the names, residence addresses and telephone numbers and percentage ownership of each shareholder or member, as appropriate, and submit a copy of the Articles of Incorporation or Articles of Organization to RE/MAX INTEGRA, Midwest (if more space is required, attach additional sheets hereto):

a. James E. Dulin II
[redacted]
[redacted]46033
[redacted] 100%

b. _____ __%

c. _____ __%

d. _____ __%

4. If you are a corporation or limited liability company, list below the names, residence addresses and telephone numbers of each director or manager, as appropriate (if more space is required, attach additional sheets hereto):

a. James E. Dulin II
(same as above)

b.

c.

d.

5. If you are a corporation, list below the title, names, residence addresses and telephone numbers of each officer (if more space is required, attach additional sheets hereto):

EXHIBIT A

a. President:

_____
_____
_____
_____

b. Vice President

_____
_____
_____
_____

c. Treasurer:

_____
_____
_____
_____

d. Secretary:

_____
_____
_____
_____

e. Others:

_____
_____
_____
_____

_____
_____
_____
_____

PLEASE PROVIDE US WITH INFORMATION SIMILAR TO THE ABOVE IF YOU ARE A BUSINESS ENTITY OTHER THAN A PARTNERSHIP, CORPORATION OR LIMITED LIABILITY COMPANY.

EXHIBIT A

EXHIBIT D
TO THE FRANCHISE AGREEMENT

Essential ICA Provisions

RE/MAX, LLC (***"RE/MAX, LLC"***) has created a Model Independent Contractor Agreement (***"ICA"***) to guide Franchisees in the development of an ICA, which is the primary legal document RE/MAX Franchisees use to establish the business and financial relationship with their Sales Associates (see RE/MAX, LLC's Model ICA at **www.REMAX.net**).

Importantly, the Model ICA satisfies the "written agreement" requirement for securing "Statutory Non-Employee" treatment of your independent contractor Sales Associates for federal tax purposes. And it lays the foundation for the way you need to treat your independent contractors to meet the other two pre-requisites for taking advantage of the "Statutory Non-Employee" safe harbor. In this way it seeks to minimize the possibility of an IRS audit of the status of your Sales Associates while giving you greater comfort in not withholding federal income taxes or contributing to FICA in respect of your independent contractor Sales Associates.

Just as important, the ICA is the document by which you, the Broker, bring your Sales Associates under your Limited License to use the RE/MAX Marks, and it extends your use limitations to them and establishes the standards of performance and professionalism necessary to grow the goodwill embodied in the RE/MAX Marks.

Franchisees are free under the RE/MAX System to develop such agreements and forms, including ICA forms, as they deem appropriate, so long as such documents do not undermine or adversely impact the rights and interests of the balance of the RE/MAX Network or expose others, including RE/MAX, LLC, to potential liability.

To preserve flexibility for those who may elect to create their own ICA rather than adapt RE/MAX, LLC's Model ICA for their use, RE/MAX, LLC has identified certain essential provisions (***"Essential ICA Provisions"***) that protect and advance the interests of the entire RE/MAX Network. You are required to include these Essential ICA Provisions, as set forth in the following pages, in every ICA you develop and use.

The Paragraph references shown below correlate to RE/MAX, LLC's Model ICA so that you can read and interpret these Essential Provisions in the context of that Model ICA. RE/MAX, LLC reserves the right to modify or amend these Essential Provisions and all future changes shall become binding upon RE/MAX Franchisees for all ICAs entered into commencing 60 days after the distribution of notice of each such change.

ESSENTIAL ICA PROVISIONS (April 1, 2014)

2. INDEPENDENT CONTRACTOR.

D. No Relationship with Regional or RE/MAX, LLC. Contractor acknowledges that the independent contractor relationship described in this Agreement is solely between Contractor and Broker and that it is only through Broker and such relationship that Contractor is entitled to participate in the RE/MAX Network. Contractor acknowledges and agrees that no contractual relationship of any kind exists between Contractor and Regional or between Contractor and RE/MAX, LLC. Contractor further acknowledges that Contractor is not an employee or an agent of Regional or of RE/MAX, LLC. Contractor agrees never to claim or assert that Contractor is an employee of or an agent of Regional or of RE/MAX, LLC. Contractor further agrees to look solely to Broker for performance of the terms and conditions of this Agreement. Contractor acknowledges that Regional and RE/MAX, LLC are not bound by, or subject to, the terms and conditions of this Agreement.

EXHIBIT A

4. CONTRACTOR'S RESPONSIBILITIES.

C. Authority to Establish Commissions and Required Disclosure. Contractor acknowledges that Broker, like any other real estate brokerage entity, comprises a single competitive unit in the name of which all Real Estate Service Agreements are to be taken. Contractor also acknowledges that Broker has the right to determine the commissions charged on its Real Estate Service Agreements and for the services of its sales force. Consistent with the RE/MAX System, Broker hereby authorizes Contractor to negotiate or to otherwise independently establish the commission to be paid Broker on a transaction-by-transaction basis on all agency relationships, referrals and cooperative sales procured by Contractor, but Broker reserves the right to withdraw this authorization at any time. In the interest of avoiding consumer confusion regarding the commission rates or fees available generally from RE/MAX offices, brokers and agents, Broker may discourage or prohibit the advertising of commission rates or fees by Contractor. Contractor shall not advertise any commission rates or fees without the prior written authority of Broker, with such authority being revocable at any time. In the event that Broker authorizes the advertisement of commission rates or fees, Contractor shall assure that any advertisement of commission rates or fees by Contractor includes as a disclosure, in prominent letters no smaller than one half the font used for displaying the commission rates or fees in such advertising, the following: "Different commission rates, fees and listing and marketing services may be offered by other RE/MAX offices and RE/MAX sales associates in this market area." In addition, it shall be the responsibility of Contractor to make sure that potential clients fully understand the listing and marketing services that will be provided by Contractor in the market area in return for the commission rates or fees advertised. Contractor agrees to act strictly within the authority granted by this Subparagraph with respect to the establishment and advertising of commission rates or fees.

J. Adherence to Office Policies and System Quality Standards. Contractor shall strictly observe all office rules, procedures, standards, guidelines and policies (collectively ***"Office Policies"***) from time-to-time established by Broker for the operation of Broker's RE/MAX office and the conduct of its Sales Associates. Specifically, but without limitation, Contractor shall maintain the highest ethical standards in the conduct of Contractor's real estate activities, shall maintain Contractor's personal appearance and appearance of Contractor's office or work area in a clean and orderly manner and shall provide dependable, efficient, courteous, high-quality professional real estate services to the public in a manner designed to maintain goodwill among the public for the entire RE/MAX System. In addition, Contractor shall abide by all RE/MAX System policies, guidelines and standards (***"System Standards"***) pertaining to Sales Associates affiliated with the RE/MAX Network as from time-to-time approved or prescribed by Regional and/or RE/MAX, LLC. Contractor acknowledges that Contractor's agreement to adhere to the Office Policies of Broker and the System Standards of Regional and RE/MAX, LLC is a material consideration for the execution of this Agreement by Broker, and that such Office Policies and System Standards have been established for the purpose of preserving the reputation, high standards and goodwill associated with the RE/MAX Marks (as defined in Subparagraph 8.A.). Contractor acknowledges that such System Standards do not govern the specific manner and means by which Contractor conducts Contractor's day-to-day real estate activities as an independent contractor on behalf of Broker. Any breach of this Subparagraph 4.J. will constitute a material breach of this Agreement.

K. Compliance with Laws and Good Business Practices. Contractor shall abide by all applicable laws, ordinances and regulations including, without limitation, local, state and federal laws and regulations relating to real estate transactions and real estate service businesses. Contractor shall also abide by the rules of ethical conduct established by the National Association of REALTORS®. Contractor's advertising and promotion must be completely factual and conform to the highest standards of lawful, ethical advertising. In all dealings with clients, customers, suppliers, public officials, other real estate agents and brokers and the general public, Contractor must adhere to the highest standards of business behavior, honesty, integrity, fair dealing and ethical conduct. Contractor agrees to refrain from any business or advertising practice which may expose Broker to legal action or liability or adversely affect the reputation or image of Broker, Regional, other RE/MAX offices or RE/MAX affiliates, the RE/MAX Network, RE/MAX, LLC or the goodwill associated with the RE/MAX Marks. Any breach of this Subparagraph 4.K. will constitute a material breach of this Agreement.

L. Loyalty. At all times during the term of this Agreement, Contractor shall act under a duty of loyalty in support and in furtherance of the RE/MAX System and RE/MAX Network and shall maintain a proper attitude toward the public, Broker and Contractor's fellow RE/MAX Sales Associates. Contractor shall not engage in any acts or activities that disrupt the Broker's office or are likely to adversely affect the image of Broker, the

EXHIBIT A

RE/MAX Network, other RE/MAX offices or Sales Associates, Regional or RE/MAX, LLC, or that may detract from or tend to undermine the growth of the RE/MAX Network, including without limitation, any acts in furtherance of any non-RE/MAX real estate business or the establishment of, or acquiring an investment or ownership interest in, any non-RE/MAX real estate business or the recruiting of any RE/MAX Sales Associates for any existing or future non-RE/MAX real estate business which does or may compete with the RE/MAX Network. Any breach of this Subparagraph 4.L. will constitute a material breach of this Agreement.

M. Hiring of Personal Assistants and Creating Working Relationships. Without authority from and the prior written approval of Broker, Contractor shall not hire, employ, contract with or for, retain the services of, or arrange for any continuing working relationship with, any licensed or unlicensed personal assistant, or any licensed person, who is not affiliated with Broker nor shall Contractor hold or sponsor the license of any real estate broker or salesperson.

N. REALTOR® Membership. Contractor shall maintain membership in good standing in the local Association or Board of REALTORS® affiliated with the National Association of REALTORS® (***"NAR"***) having jurisdiction over the market areas served by Broker and shall abide by the Code of Ethics promulgated by NAR and all of the rules and regulations of each local or regional MLS in which Broker participates.

Q. Identification as Independent Operation. Contractor agrees to indicate in all dealings with clients, customers, suppliers, public officials and others that Contractor is affiliated as an independent contractor with Broker and that Broker's office is independently owned and operated. Contractor agrees, where appropriate or required by Office Policies or System Standards, to include in all advertising placed by Contractor the statement: "Each RE/MAX office is independently owned and operated."

R. RE/MAX Mainstreet Subscription. Contractor agrees to subscribe to RE/MAX Mainstreet which can be accessed through a subscription to any Internet Service Provider. Contractor will be required to sign and abide by a RE/MAX Mainstreet Member Registration and Website User Agreement, which sets forth the terms and conditions relating to use of RE/MAX Mainstreet. Contractor shall not use RE/MAX Mainstreet to send unsolicited bulk electronic messages.

8. RE/MAX MARKS.

A. Ownership of RE/MAX Marks. Contractor acknowledges that RE/MAX, LLC is the exclusive owner of all right, title and interest in and to RE/MAX, LLC's registered and unregistered marks, which include, without limitation, the name "RE/MAX" and certain other service marks, trademarks, trade dress and other commercial symbols, including the RE/MAX Balloon and Design, the red-over-white-over-blue horizontal bar design, and such other service marks, trademarks, trade dress and symbols as RE/MAX, LLC may develop, acquire, or license for RE/MAX Affiliates' use from time-to-time (collectively the ***"RE/MAX Marks"***). Contractor further acknowledges that the RE/MAX Marks have become widely known throughout the United States and are now famous.

B. Permitted Uses of RE/MAX Marks on Behalf of Broker. Contractor acknowledges that Broker has the right to use the RE/MAX Marks pursuant to, and solely in accordance with, Broker's RE/MAX Franchise Agreement with Regional. Contractor understands and agrees that Contractor is not being granted a license, and has no independent right, to use of any of the RE/MAX Marks, but rather that, by virtue of the Limited License embodied in Broker's Franchise Agreement, Contractor may use the RE/MAX Marks on Broker's behalf and under Broker's supervision, when acting in Contractor's capacity as a real estate sales associate exclusively for Broker. Contractor further understands that all use by Contractor of the RE/MAX Marks on behalf of Broker inures exclusively to the benefit of RE/MAX, LLC. Contractor agrees to use the RE/MAX Marks only in connection with Broker's office name and address and in accordance with all other requirements set forth in the most current edition of RE/MAX, LLC's *RE/MAX Trademark and Graphic Standards* manual, as amended from time-to-time, (***"Trademark Manual"***).

C. Prohibited Uses of RE/MAX Marks and Broker's Name. Contractor is not authorized to and shall refrain from using Broker's name or the RE/MAX Marks: (i) in connection with any business other than the real estate brokerage business of Broker; (ii) in conjunction with the name or photo of any licensed person who is not

affiliated as a Sales Associate with Broker; (iii) in the name of any "team" of agents or of any entity, group, network or association other than the RE/MAX Network; (iv) in the name of or in connection with activities comprising a RE/MAX office/agent locator service as defined in the Trademark Manual; (v) in the name of or in connection with activities comprising a private referral network as defined in the Trademark Manual; (vi) in conjunction with any third party service that competes directly with a service offered by Regional or RE/MAX, LLC, to the public, or affiliates of the RE/MAX Network; (vii) in any telephone directory or other directory listing, including without limitation, yellow pages display advertising or any Internet directory listing, that does not comply with the Trademark Manual; (viii) on or in connection with any Internet website that functions for any purpose other than the promotion of the real estate business of Broker or that does not include the office name and address of Broker; (ix) in connection with the offering of real estate related services in market areas that Contractor does not serve personally and directly; (x) in connection with any real estate related services that do not meet the standards of quality and professionalism in Contractor's market area; or (xi) in any other manner not approved by Broker or that is not in compliance with, or is prohibited by, the Trademark Manual.

D. No Uses By or In Support of Third Party's Services or Programs. Contractor is not authorized to and shall refrain from entering into any relationship with, or sponsorship or endorsement arrangement concerning, any third party individual or entity where such relationship results in, involves, or purports to permit, the use or display by such third party of Broker's name, or any of the RE/MAX Marks, or any other name that is associated with Broker's name, in connection with the offering or promotion of such third party's products, services, programs, beliefs or causes.

E. Registration and Use of RE/MAX Formative Domain Names Prohibited. Contractor is not authorized and agrees not to register any Internet domain name that includes the term "remax" or any of the RE/MAX Marks (***"RE/MAX Formative Domain Name"***). Contractor agrees and acknowledges that Contractor will not have any legitimate interest in registering or owning any RE/MAX Formative Domain Name or owning any RE/MAX Formative Domain Name after the termination of this Agreement, and that registering or owning any RE/MAX Formative Domain Name or retaining ownership of any RE/MAX Formative Domain Name after termination of this agreement would be an act of bad faith.

F. No Other Uses of Broker's Name or RE/MAX Marks Permitted. Except as expressly permitted under this Paragraph 8, Contractor will not use Broker's name or the RE/MAX Marks in any manner whatsoever. Under no circumstances is Contractor permitted to authorize any other real estate license holder to use Broker's name or the RE/MAX Marks on business cards or in advertising or promotional materials of any kind or to allow such license holder to appear in name and/or image with or under the RE/MAX Marks or to otherwise benefit from them or Broker's name.

G. Material Breaches and Third Party Beneficiaries. Any breach of any Subparagraph of this Paragraph 8 shall constitute a material breach of this Agreement. Contractor acknowledges and agrees that Regional and RE/MAX, LLC are third party beneficiaries of this Paragraph 8 and, accordingly, Regional and/or RE/MAX, LLC may bring an action directly to enforce the provisions of this Paragraph.

H. Indemnification for Costs of Forced Compliance. Contractor agrees to indemnify Broker, Regional and/or RE/MAX, LLC for all costs incurred, including court costs, expert witness fees, consumer survey costs and reasonable attorney fees, by Broker, Regional and/or RE/MAX, LLC to secure full compliance with the provisions of this Paragraph 8.

9. DISPUTE RESOLUTION.

A. Reporting of Problems and Complaints. Contractor shall promptly report to Broker or Broker's broker of record, office manager or other person designated by Broker, all problems, complaints and other circumstances, related to Contractor's conduct, activities or services which may lead to claims, disputes or controversies. Any failure by Contractor to report promptly such problems, complaints or other circumstances, or to cooperate fully with Broker in accordance with this Paragraph 9, shall be grounds for immediate termination of this Agreement by Broker for cause.

EXHIBIT A

11. TERMINATION.

A. By Broker for Cause. If Contractor commits a material breach of this Agreement, Broker may terminate this Agreement immediately and without prior notice and pursue any and all remedies for the material breach that are available to Broker at law or in equity.

12. DE-IDENTIFICATION.

Following termination or expiration of this Agreement without Renewal or of Contractor's affiliation with the RE/MAX Network upon any other event, Contractor shall be free to continue Contractor's real estate business with competing real estate operations or to establish Contractor's own brokerage operation or other business alone or in concert with others. However, Contractor acknowledges the exclusive rights of RE/MAX, LLC to its real estate system, its method of operation and its distinguishing characteristics, including but not limited to the RE/MAX Marks, slogans, advertising copy, copyrighted materials and other distinguishing characteristics now or hereafter adopted, displayed, used, existing as part of or becoming a part of the RE/MAX System, and RE/MAX, LLC's compelling business interest in protecting the exclusivity of same to members of the RE/MAX Network.

A. Proprietary Materials. Contractor acknowledges that the sales plans, programs, manuals, rosters, forms, contracts, agreements, brochures and other training, listing and sales materials provided hereunder by, and the information gained from, the files or business of Broker, Regional or RE/MAX, LLC, irrespective of the origin or ultimate source (collectively, the ***"Proprietary Materials"***), are and shall remain the exclusive property of their source, be it Broker, Regional and/or RE/MAX, LLC. Upon termination or expiration of this Agreement, without Renewal, Contractor shall promptly return to Broker the original and all copies of the Proprietary Materials in Contractor's possession and shall not, after such termination or expiration use, copy, or reproduce any aspect of the Proprietary Materials for any reason, or permit, suffer or tolerate the use of the Proprietary Materials for Contractor's own advantage or the advantage of others.

B. RE/MAX Marks and Related Identifiers. Following termination or expiration of this Agreement without Renewal or of Contractor's affiliation with the RE/MAX Network upon any other event, in connection with any business thereafter carried on by Contractor, Contractor will:

(1) immediately and clearly distinguish Contractor's business from RE/MAX and the RE/MAX System so as to avoid any possibility of confusion to the public, and not directly or indirectly at any time identify or hold Contractor out as being or as having been affiliated with Broker, Regional, RE/MAX, LLC or the RE/MAX Network;

(2) immediately erase or obliterate from your letterhead, stationery, printed matter, advertising, web sites and web pages (including without limitation, in visual content, hyperlinks, source code, meta tags, or third-party directory listings), or other materials the RE/MAX Marks and all words and designations indicating that you are or were associated or affiliated with Broker, Regional, or RE/MAX, LLC or the RE/MAX Network;

(3) promptly assign all of the telephone numbers promoted in connection with Contractor's use of the RE/MAX marks to Broker, or upon their request Regional or RE/MAX, LLC, and immediately instruct the telephone company in writing to redirect all calls to such numbers in accordance with Broker's, Regional's or RE/MAX, LLC's directions. Contractor hereby directs each such telephone company or directory listing agency to accept Contractor's signature on this Agreement as Contractor's signed authorization and direction to them to assign numbers and re-direct calls as described above, and to discontinue as soon as practicable any and all on-line or printed phone directory advertising or listings that refer to Contractor in connection with the RE/MAX marks;

(4) immediately assign and transfer any RE/MAX Formative Domain Names owned, held or controlled by Contractor, to Broker, or upon their request Regional or RE/MAX, LLC, or take such actions

EXHIBIT A

regarding such domain name(s) as Regional or RE/MAX, LLC may direct. In connection therewith, Contractor agrees, at Contractor's own expense, promptly to execute and deliver all necessary documents and take any action reasonably requested by Broker, Regional, or RE/MAX, LLC necessary to effect the assignment and transfer of all such domain names, including compliance with any procedure for the transfer of domains names established by the domain name registrar.

(5) immediately take any action that may be required to cancel, or at Regional or RE/MAX, LLC's request transfer to them or their designee, all pseudonyms, logins, or identifiers (including but not limited to vanity license plates, user names, instant messaging or social networking screen names or user names, or e-mail addresses) that contain any reference to any RE/MAX Marks;

(6) not adopt, use, or imitate, in any manner or for any purpose, the RE/MAX Marks or any name, trademark, service mark, sign design, logo, advertisement, representation, or business activity that may mislead others in the real estate business and/or the public to believe Contractor is still a part of, affiliated with, or sponsored in any way by the RE/MAX Network, including without limitation:

i) the RE/MAX red-over-white-over-blue trade dress, any "for sale" sign, trade dress or identity scheme comprised of lateral elements in red and blue separated by a white element, or a design comprised of a three horizontal bar design, or any other trade dress that on review is deemed by RE/MAX, LLC to be confusingly similar to the RE/MAX trade dress,

ii) the terms "RE/MAX," "REMAX" or "MAX" or any other term that begins with the prefix "RE" or ends in the suffix "MAX" or any other term that on review is deemed by RE/MAX, LLC to create a possibility of confusion or question regarding Contractor's affiliation with or sponsorship or endorsement by Broker, Regional, RE/MAX, LLC or the RE/MAX Network,

iii) a hot air balloon or a hot air balloon symbol, and

iv) the term "Above the Crowd" or any other phrase beginning with "Above" or ending with "Crowd";

(7) refrain from referring in any form of advertising or promotion to designations, certifications, awards or recognition that Regional, RE/MAX, LLC or any of their related or affiliated companies may have granted to Contractor at any time during Contractor's affiliation with the RE/MAX Network.

Contractor hereby appoints Broker, Regional, or RE/MAX, LLC as Contractor's agent and attorney-in-fact to act for and on Contractor's behalf to take any of the actions referred to in Subparagraphs 12.B.(3), (4) and (5) with the same legal force and effect as if taken by Contractor.

C. Applicability of Prohibitions. The prohibitions upon termination or expiration of this Agreement as set forth in Subparagraphs 12.A. and 12.B., shall not affect the rights and privileges which may be conferred upon Contractor by any contract establishing an affiliation with another RE/MAX franchisee subsequent to such termination or expiration.

D. Enforcement; Injunctive Relief; Attorneys' Fees. Contractor hereby acknowledges and agrees that it would be difficult to measure the economic loss that would occur as a result of the breach of any of the provisions of this Paragraph 12, and that such a breach would cause immediate and irreparable harm for which there would be no adequate remedy at law. Contractor further acknowledges and agrees that any of the foregoing provisions may be enforced by injunction and/or restraining order. Further, Contractor acknowledges and agrees that RE/MAX, LLC, as the owner of federal and state registrations for and common law rights in the RE/MAX Marks, shall have a direct right to enforce any of the provisions contained in this Paragraph 12 through appropriate legal proceedings. Contractor agrees that Broker may transfer to Regional and/or RE/MAX, LLC the right to pursue, in Broker's, Regional's and/or RE/MAX, LLC's name, any claim (including without limitation a breach of contract claim) against Contractor for breach of any term or condition contained in this Paragraph 12 and Contractor further agrees not to contest any such transfer in any legal proceeding. If Broker, Regional and/or RE/MAX, LLC, is required to retain

an attorney to enforce any of the provisions of this Paragraph 12 or to institute legal proceedings incident to such enforcement, Contractor shall pay, in addition to all other sums for which Contractor may be found liable, reasonable attorneys' fees, court costs and litigation expenses incurred by Broker, Regional and/or RE/MAX, LLC.

E. Third Party Beneficiaries. Regional and RE/MAX, LLC, shall be deemed third party beneficiaries of the acknowledgements, agreements and provisions of this Paragraph 12 including, without limitation, for purposes of protection of the RE/MAX System, the Proprietary Materials, and the RE/MAX Marks.

– END –

EXHIBIT B

PURCHASE PROPOSAL OUTLINE

August 23, 2021

Via email Mike@MikeJonesSellsHomes.com

Mike Jones
RE/MAX at the Crossing
8310 Allison Pointe Blvd #201
Indianapolis, IN 46250

Dear Mike:

Jimmy Dulin, ("Seller") hereby outlines the terms and conditions under which he would sell his existing Lafayette RE/MAX franchise:

Buyer:	Mike Jones
Seller:	Jimmy Dulin
Purchase Price:	One Dollar ($1.00)
Purchase Includes:	all furniture and exterior signage currently located at 215 Ferry Street, Lafayette, IN 47901. Seller shall prepare a list of furniture to be included in the sale which shall be attached to and made part of the Purchase Agreement. Upon closing, Buyer at Buyer's expense, shall be responsible for removal of all furniture and exterior signage.
Purchase Agreement:	To be negotiated upon agreement, with basic terms noted in this proposal.
Closing Period:	Buyer shall close within (thirty) 30 business days from day of fully executed Purchase Agreement.
Non-Binding Provision:	This letter is an outline of the terms and conditions under which the Seller will agree to sell and Buyer will agree to purchase the franchise, furniture and exterior sign. It is a non-binding outline subject to both parties fully executing a mutually agreeable Purchase Agreement.

Please give me a call if you have any questions regarding the contents of this Proposal.

Agreed and Accepted this _____ day of August, 2021:

Seller **Buyer**

_____ _____
Jimmy Dulin Mike Jones

EXHIBIT C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 1881CV01676

REAL ESTATE VISIONARIES, INC., d/b/a LEADING EDGE and others[1]

vs.

RE/MAX OF NEW ENGLAND, INC.

FINDINGS OF FACT AND CONCLUSIONS OF LAW FOLLOWING JURY-WAIVED TRIAL

Overview

This case concerns the contractual and business relationship between Re/Max, a well-known franchisor of real estate brokerage services, and one of its successful franchisees. The franchisee plaintiffs are Real Estate Visionaries, Inc., d/b/a Leading Edge, and its four owners, Stephen Chuha, Paul Mydelski, Eileen Hamblin and Linda O'Koniewski (collectively, "Leading Edge" or "LE"). The defendant and counterclaim plaintiff is Re/Max of New England, Inc. ("Re/Max"), which also uses the trade name Integra.

Leading Edge was formed when its four principals consolidated several Boston-area Re/Max franchisee real estate brokers, and then grew further by expansion. By mid-2016, Leading Edge had nine locations in greater Boston. Re/Max typically requires each new location to sign its own franchise agreement. As a result, Leading Edge's nine offices operated under six different franchise agreements. Each Re/Max franchise agreement has a term of five years; therefore, a "multi-point" franchisee like Leading Edge has multiple dates on which their franchises expire, separated by months or years.[2]

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[1] Stephen Chuha, Jr.; Paul Mydelski; Eileen Hamblin; and Linda O'Koniewski.

[2] A multi-point franchisee signs a new franchise agreement when each location is up for renewal; however, Re/Max sometimes allows locations to be held over month-to-month.

As long as a franchisee intends to operate as a Re/Max franchisee, these "staggered" termination dates pose little concern. However, if a multi-point franchisee contemplates continuing in the real estate brokerage industry outside of Re/Max, staggered termination dates pose a significant challenge. This is especially true in light of the non-compete provisions in Re/Max's franchise agreements, which by 2014 included both (i) an "in-term" non-compete clause, which barred franchisee/owners from participating in *any* other real estate services, and (ii) a "post-term" non-compete clause, which barred franchisee/owners from participating in any *franchised* real estate brokerage for one year after Re/Max franchise expiration. For a multi-point franchisee like Leading Edge, the combination of staggered termination dates and the non-compete provisions make it difficult to envision how a franchisee might disengage from Re/Max and continue operating in real estate after a Re/Max franchise agreement expires.

This case concerns the confluence of staggered termination dates and the Re/Max non-compete provisions, and how Re/Max and Leading Edge navigated their conflicting business interests in the context of their contractual relationship. Both Re/Max and Leading Edge are sophisticated commercial parties. Leading Edge entered multiple franchise agreements aware of the staggered termination dates and the issues they might eventually pose. Both sides had leverage as they sought to negotiate an acceptable outcome to the challenge posed by the contract terms. For two years, both parties negotiated hard. Both offered proposals that reflected some compromise and were commercially reasonable, but ultimately were not accepted by the other party. There is nothing actionable, of course, about hard-bargaining or business contracts that pose complexities. The claims of both parties in this case concern whether the other side crossed the line from hard bargaining to breach of contract or other actionable conduct.

Most of the parties' conduct throughout their relationship, and especially from June 2016 to July 2018 when their conflict came to a head, was not actionable. Each side flexed their muscle as they negotiated to resolve the challenge posed by the Re/Max franchise agreements. One significant exception, however, arose in late June 2018. By then, Re/Max maintained its insistence that Leading Edge comply with the franchise terms, including the staggered termination dates, and had refused to permit franchise locations to operate on a month-to-month basis in its continued effort to obtain five-year renewals. Leading Edge recognized, essentially, its limited options given the contract terms. It first sought court intervention, asking for a preliminary injunction to require Re/Max to allow all Leading Edge sites to continue as franchisees so long as some of the franchise agreements remained in effect. When that was unsuccessful, Leading Edge prepared to swallow the bitter pill—dictated by the franchise agreements—that required it to stop operations at its two expired locations while continuing to operate its four locations that remained under contract.[3]

As that new reality began to unfold, on June 26-28, 2018, Re/Max, the franchisor, took steps designed to undermine Leading Edge's ongoing, *in-contract*, *franchised* business. Re/Max sought to recruit Leading Edge sales agents—whether they worked at expired or in-term locations—away from Leading Edge to other Re/Max franchisees. It also enlisted local Re/Max franchisees to recruit Leading Edge sales agents and prepared to take over Leading Edge's business, even though four LE franchises remained under contract with Re/Max. By these actions, Re/Max breached the unexpired franchise agreements with Leading Edge, including the covenant of good faith and fair dealing implied in those contracts. Re/Max's breach was

[3] In all, Leading Edge was required to stop operations at four locations, including two satellite offices (Belmont and Cambridge), and continued operations at five locations, including one satellite office (Boston—South End). With respect to the franchise agreements, two had expired and four had not.

material, and excused Leading Edge's continued performance under the unexpired franchise agreements. Leading Edge thus was justified in the steps it took from June 27 to July 3, 2018, to end its relationship with Re/Max and start operations as an independent (non-franchised) real estate broker.

Re/Max's actions are also strong evidence of the purpose behind Re/Max's contractual practices of requiring staggered termination dates and non-compete clauses: to make it impossible, or at least exceedingly difficult, for a Re/Max multipoint franchisee to leave the Re/Max system and operate as a competitor to Re/Max. Even though the particular steps Re/Max took from 2016 through 2018 were not independently actionable—for instance, employing contracts with staggered expiration dates, refusing a unified termination date, or declining to continue month-to-month authorization—once Re/Max set out to destroy Leading Edge's unexpired, *in-term* franchises, the entirety of Re/Max's course of conduct took on a different quality. With its actions in late June 2018, Re/Max crossed the line from acceptable contract practices and hard bargaining to impermissibly restraining or avoiding competition. Once Re/Max sought to recruit LE's agents and undermine LE's in-franchise business, Re/Max's actions and overall course of conduct vis-à-vis Leading Edge were unfair and in violation of G. L. c. 93A, §§ 2 and 11.

The basis for these conclusions is set forth in the Findings of Fact and Conclusions of Law below.

Introduction of Claims and Counterclaims

Leading Edge commenced this action on June 11, 2018. Its immediate goal was to address Re/Max's termination of three Leading Edge locations, while its other locations remained under contract and operating.

Leading Edge sought a temporary restraining order and preliminary injunction that would have required Re/Max to allow the expired franchise locations to remain operating while other Leading Edge franchises remained under contract. After a hearing, I denied the motion for preliminary injunction. I also sought to expedite trial on the merits with the hope that the serious contracting and competition issues raised by Leading Edge could be decided before the remaining franchise agreements expired between January 2019 and December 2019.

In its Amended Verified Complaint, Leading Edge brings claims for breach of contract, breach of the implied covenant of good faith and fair dealing, tortious interference with contractual relations, unfair or deceptive acts or practices in violation of G. L. c. 93A, §§ 2 and 11, fraudulent inducement of the franchise agreements, and for declaratory judgment.

Re/Max filed counterclaims alleging that Leading Edge breached its franchise agreements in several ways and engaged in unfair or deceptive conduct in violation of G. L. c. 93A, §§ 2 and 11.

After accelerated discovery, a jury-waived trial occurred over six days between March 11-19, 2019. After post-trial briefing was complete, I heard final arguments on April 24, 2019.

Findings of Fact

The following findings of fact are drawn from the 118 trial exhibits and the trial testimony of ten witnesses, including the following real estate executives:

1. Paul Mydelski, part owner of Leading Edge and a licensed real estate broker;
2. Linda O'Koniewski, part owner of Leading Edge and a licensed real estate broker;
3. Daniel Breault, an Executive Vice President for Re/Max, and Regional Director who worked closely with franchisees and was involved in all the negotiations with Leading Edge;
4. Fiona Petrie, a Vice President and managing director of Re/Max, who spearheaded the negotiations with Leading Edge beginning in 2017;

5. Paula Alexander, Chief Executive Officer and director of Re/Max;

6. Efram Barak, former chief financial officer of Re/Max, whose testimony was received through deposition transcript; and

7. Christine Oliver, an executive with Compass, a competing real estate brokerage.

I also heard testimony from three expert witnesses:

a) Brent Berson, a C.P.A. retained by Leading Edge, who testified about Re/Max's financial statements included in its Franchise Disclosure Documents ("FDD"), and Re/Max's failure to consolidate a subsidiary's operations with those of Re/Max, until Re/Max re-stated its financials in 2017.

b) Michael Seid, retained by Re/Max to testify about franchising; and

c) Bruce Schaefer, a tax attorney retained by Re/Max to testify about damages allegedly suffered by Re/Max.

A large portion of the relevant chronology and even many of the details of the interactions between Re/Max and Leading Edge from 2016 through July 2018 are not disputed. Much of the parties' interaction was in writing, and both sides, for the most part, recalled their interactions consistently. This is reflected in the parties' Joint Stipulation of Undisputed Facts (Pleading No. 45), which helpfully describes much of the chronology and the various contracts in place between the parties and their terms. Trial testimony was nonetheless important, especially to illuminate the decision-making and motivations of each side as they sought to navigate their contractual relationship.

A. Re/Max

Re/Max LLC is the parent company of the defendant, Re/Max of New England, Inc. Re/Max LLC is a worldwide franchisor of real estate brokerage businesses.

Re/Max LLC operates through regional sub-franchisors, which have exclusive territories. Re/Max of New England, Inc. is the sub-franchisor for New England, with its principal place of

business in Natick, Massachusetts. Because New England franchisees interact almost exclusively with the sub-franchisor and not the LLC, for ease of reference, I will refer to Re/Max of New England as "Re/Max."

Re/Max has approximately 230 franchisees operating in its territory. Re/Max competes with other franchisors to sell franchises to real estate sales offices. In Massachusetts, Re/Max's competitors include Coldwell Banker, Century 21, ERA, Keller Williams, and Sotheby's.

Re/Max, as the franchisor, sells franchises in its New England territory for the operation of real estate sales offices. Re/Max franchisees, in turn, operate real estate offices, under the name Re/Max. Re/Max requires its franchisees to execute a franchise agreement ("FA"), and the franchisor/franchisee relationship is governed by that agreement. A Re/Max franchisee must have a licensed real estate broker for each franchise location to facilitate buying and selling properties consistent with Massachusetts law. In addition to the "broker of record," a franchise typically hires multiple real estate agents to work at the franchise, usually as independent contractors who are paid commissions upon the purchase or sale of a home. The FA identifies a quota, or minimum number, of sales agents to be maintained at each franchise location.

A franchisee pays Re/Max in a variety of ways under the FA. The most prominent manner of payment is through a management fee and promotional fee for each sales agent working for the franchisee. Re/Max, for its part, provides the franchisee the use of the Re/Max name and trademarks, the benefit of Re/Max advertising, certain training and educational services for agents and broker/owners, and access to technology and sales tools.

In Massachusetts, Re/Max is a leading competitor among real estate franchisors. Using real estate listings tracked by the Multiple Listing Service Property Information Network ("MLS"), in 2016 the following franchisors had the following market shares by volume:

Coldwell Banker 13.96%, Re/Max 9.06%, Keller Williams 8.44%, Century 21 5.37%, and ERA 1.28%. These market shares were nearly identical for 2017. A franchisor's market share in a particular town or region can vary significantly and depends on the performance of its franchisees. Re/Max's Leading Edge franchise, for instance, achieved market share between 20 and 30% in towns like Melrose and Winchester.

B. Leading Edge

Real Estate Visionaries, Inc., d/b/a Leading Edge, was a Re/Max franchisee. The corporation was formed in 2012 when four long-time real estate brokers, each with one or more Re/Max franchises, joined together to form Leading Edge. Specifically, Stephen Chuha of Reading had operated a Re/Max franchise in Reading since 1990. Eileen Hamblin and Linda O'Koniewski, both of Melrose, had operated a Re/Max franchise in Melrose since 1994[4] and later in Stoneham. Chuha, Hamblin and O'Koniewski joined forces to create a Re/Max franchise with three locations. Meanwhile, Paul Mydelski of Medford had operated Re/Max franchises in Winchester since 2001 and later in Arlington and Lexington. In December 2012, these four brokers joined their operations to form Leading Edge. Mydelski, Chuha, O'Koniewski and Hamblin are each part owner and director of Leading Edge. The owners transferred their respective franchise agreements to Leading Edge and began operating as Re/Max Leading Edge. Leading Edge and its owners assumed all rights and obligations under the various FA's for all their locations.

After forming Leading Edge, Leading Edge and its four principals periodically renewed their franchise agreements with Re/Max to continue operating their offices, each time paying a

[4] Hamblin entered her first Re/Max franchise agreement in 1994. O'Koniewski partnered with Hamblin in 2000, at which time subsequent renewals and FA's included both Hamblin and O'Koniewski.

renewal fee around $26,000. The most recent FA renewals for each LE franchise location are set forth below:

Date	Location	Renewal Fee	
Sept. 27, 2011	Winchester	$24,000	**Dryden and Allen, transferred to LE
Jan. 24, 2012	Lexington	$26,000	**Dryden and Allen, transferred to LE
Jan. 23, 2014	Reading	$26,000	
Jan. 23, 2014	Arlington	$26,000	
Feb. 4, 2014	Wakefield	$26,000	
Dec. 31, 2014	Melrose	$26,000	

Thus, at the outset of 2016, Leading Edge owned and operated these six real estate offices, each under a separate Re/Max franchise agreement.

The business of Leading Edge, through its sales agents, is to represent buyers and sellers in the process of buying and selling homes, from marketing a home through an eventual closing. Leading Edge generates revenue through sales commissions on real estate transactions (typically 6% of the purchase price, split between the buyer's broker and seller's broker). Massachusetts requires a licensed real estate broker to offer real estate services, and only a licensed broker may be paid directly for brokerage services in connection with real estate transactions. Sales agents must also be licensed and must be affiliated with and supervised by a licensed broker.

Leading Edge competes with other real estate businesses, including other Re/Max franchisees and franchisees of Coldwell Banker, Century 21, ERA, and Keller Williams, as well as independent real estate businesses, to recruit, retain and support real estate sales agents. Sales agents are essential to Leading Edge's business. They are responsible for working with buyers and sellers through each aspect of buying or selling a home. It is a personal business, and effective real estate agents build long-term relationships and networks in the communities where they work. Repeat clients or referrals constitute about 85% of Leading Edge's business.

Leading Edge and its owners provide logistical support and regular coaching and training for their sales agents. Leading Edge training includes weekly training opportunities, monthly career development luncheons, "pop-up" events, and "Mojo" events each month during which top agents share ideas and thoughts on how to grow one's business, how to interact with clients, and how to solve problems. Leading Edge also directly trains its new agents. Since 2004, O'Koniewski has run an annual "boot camp" training program, which involves eight two-hour sessions over three weeks to train new agents. She developed the course because she perceived that most industry training was focused on lead generation and not the actual business of selling real estate. Re/Max on occasion has asked Leading Edge to allow agents or broker/owners from other Re/Max franchises to attend O'Koniewski's boot camp, and Leading Edge has obliged.

Leading Edge cannot operate without sales agents. It receives commissions from transactions that are arranged and closed by its sales agents, and those commissions fund the operation of the brokerage. Leading Edge is responsible for all overhead associated with running its real estate offices, including leases, vendor costs, copy machines, electric bills, and marketing.

Paul Mydelski served as the broker of record for each of the Leading Edge FA's.

Re/Max, in contrast to its franchisees, does not engage in the business of selling real estate in Massachusetts. It is not a licensed broker. Re/Max does not employ or retain sales agents and disclaims any contractual relationship with or responsibility for sales agents affiliated with Re/Max franchisees. Re/Max has no contractual relationship with the buyers and sellers of homes (i.e., Leading Edge's customers).

EXHIBIT C

C. The Franchise Agreements between Leading Edge and Re/Max

By 2016, Leading Edge had six separate FA's for its six locations, each with a five-year term. As explained below, Leading Edge started three additional offices in 2016 and 2017. Those offices did not have their own FA's but operated as satellite offices of the Melrose franchise. Accordingly, there are nine Leading Edge office locations relevant to this case: Arlington, Lexington, Melrose, Reading, Wakefield and Winchester, each subject to an FA, and Belmont, Cambridge, and Boston (South End), which operated as "satellite" locations pursuant to the Melrose FA.[5]

Review and Execution

Prior to the execution of each FA, Re/Max provided to the owners of Leading Edge a Franchise Disclosure Document ("FDD"). The FDD is required by federal law, specifically the Federal Trade Commission's Franchise Rule, 16 C.F.R. 436. Re/Max FDD's exceeded 300 pages, including appendices, and detail the franchise relationship. The FA's themselves are about 90 pages.

Once Leading Edge formed in 2012, Mydelski was responsible on behalf of Leading Edge to review and execute each FA when it was up for renewal. In connection with each FA renewal, Mydelski reviewed portions of the FA and portions of the applicable FDD. Mydelski particularly focused on: 1) the fees Leading Edge was required to pay under the FA; 2) Re/Max's financial statements included in the FDD; and 3) the summary of terms provided in the FDD at Section 17. Mydelski did not read all of the FDD or the FA's. He reported to his three partners the results of his review, and all four principals then signed the FA's.

General Terms of Franchise Agreements

[5] During the time period discussed in this decision, Leading Edge also had franchise locations in Lynnfield, Somerville, Boston (Back Bay) and Watertown. Those FA's expired by their terms, and the offices closed. Those locations are not part of this dispute.

The terms of the FA's changed over the course of the 28-year relationship between Re/Max and Leading Edge or its predecessors. The detailed terms of the parties' contractual relationship are found in the FA as well as the FDD, which Re/Max was required to provide to the prospective franchisee fourteen days before signing the FA.

Many terms of the FA's between Leading Edge and Re/Max were consistent.

Term/Duration of FA. The standard term for each FA was five years. At the expiration of five years, the FA provides that the franchisee can renew, continue on a month-to-month basis, or terminate its relationship with Re/Max. Although the contract term uniformly was five years, since at least 2013, Item 17(a) of Re/Max's FDD's stated that the length of the franchise term was:

> 5 years. However, to facilitate larger mergers or conversions or other large transactions, as well as to accommodate existing franchisees that acquire additional offices, RE/MAX Regional may provide for a longer franchise term.

E.g., Exs. 17 and 4 (FDD for Wakefield). This text appeared in the FDD's connected to the Wakefield, Reading, Arlington and Melrose renewals in 2013 and 2014.

Fees. The FA's required that Leading Edge pay the following fees to Re/Max:

- A monthly management fee determined by multiplying the total number of LE sales agents by a per-agent fee. From 2014 through 2018, the monthly per agent fee ranged from $165-$180 per sales agent. Presuming 200 sales agents, LE paid Re/Max between $396,000 to $432,000 annually for its management fee.

- A monthly promotional fee also determined by multiplying the number of LE sales agents by a per-agent fee. From 2014 through 2018, the monthly promotional fee ranged from $136-$164 per agent. Presuming 200 sales agents, LE paid Re/Max between $326,400 to $393,600 annually for its promotional fee.

- A transaction fee comprising 1% of the gross monthly real estate commissions earned by LE sales agents, as well as a Hot Air Balloon fee of $100 per month.

- LE also was required to maintain a certain quota of sales agents at each location and pay a deficiency fee if LE failed to meet its quota at a location.

Personal Guarantees. Re/Max uniformly required personal guarantees from the individuals who owned its franchisees. Chuha, Mydelski, O'Koniewski and Hamblin executed personal guarantees for Leading Edge's obligations under its FA's with Re/Max.

Some terms changed over time. Notably, when Leading Edge principals entered their first FA's between 1990 and 2001, Re/Max promised exclusive geographic territories to franchisees, such that new franchises could not open in the same town. In 2006, Re/Max stopped offering exclusive territories to its franchisees, and its FAs reflected this change going forward.

Throughout the Leading Edge-Re/Max relationship, Re/Max required its franchisees, including Leading Edge, to enter into separate FA's for each location. Even though Leading Edge operated its offices as a cohesive business, it had a separate franchise agreement for each location.

For the time period June 1, 2014 through August 1, 2018, Leading Edge paid Re/Max a total of $3,798,700 in fees under the FA's. LE paid its fees for all franchisees in a single monthly payment.

Non-Compete Clauses and Variations over Time

Re/Max FA's included a so-called "in-term" non-compete clause for the duration of Re/Max's relationship with Leading Edge. The in-term non-compete clause broadly prohibits franchisees from competing with Re/Max during the term of their FA. It provides:

> "[N]one of you . . . your Owners, or your Sales Associates . . . will during the Term, directly or indirectly . . . operate, manage, own, have an interest in or become affiliated with in any other way (1) any non-Re/Max real estate service business; or (2) any other business or enterprise offering products or services that directly or indirectly compete with the products and services offered by Re/Max offices, Re/Max Regional or International, or any of our . . . affiliates."

FA Section 5.F, at Ex. 15 (Arlington FA); Ex. 16 (Reading FA); Ex. 17 (Wakefield FA); Ex. 19 (Melrose FA).

This non-compete clause applies to the actual franchisees—Leading Edge's owners—and also their sales agents, so long as those agents are affiliated with the franchisee.

The initial FA for nearly all Leading Edge locations did not include a "post-term" non-compete provision. In July 2012, Re/Max revised its form FA and, for the first time, began to include a post-termination non-compete clause. This clause, at Section 14.I of the FA, provides:

> "You agree that upon the termination, expiration, or non-renewal of this Agreement, neither you nor your Owners, officers, or guarantors . . . will, for a period of one (1) year from the effective date of such termination, expiration, or non-renewal . . . directly or indirectly operate, manage, own or have any ownership interest in any business that is a licensee or franchisee of any franchising organization or network that competes with [Re/Max]."

FA Section 14.I. This clause appears in the FA's for Arlington, Reading, Melrose and Wakefield. See Exs. 15-17, 19. In contrast to the in-term non-compete, which applies to franchise owners *and* their sales agents and bars *any real estate business*, the post-term non-compete applies *only to the owners* and bars *only franchised* real estate services.

Since it introduced the post-term non-compete, Re/Max has waived that provision by way of side letter with respect to certain franchisees in New England. It waived the post-term non-compete eleven times between August 27, 2014 and August 2, 2016.

Leading Edge's Contractual Status

Accounting for the multiple franchise start and expiration dates as well as the changes to the FA's over time, the following chart identifies each LE location and its initial start of the franchise, expiration date, and which version of the non-compete clause is contained in the operative FA.

EXHIBIT C

Location	Current FA Date	Expiration Date	Non-Compete Clause
Arlington	Jan. 23, 2014	Jan. 23, 2019	in-term and post-term
Belmont	Sept. 1, 2016	90 days (extended)	(see Melrose)
Boston	Oct. 13, 2017	Dec. 17, 2019	(see Melrose)
Cambridge	Sept. 1, 2016	90 days (extended)	(see Melrose)
Lexington	**Jan. 24, 2012**	**Jan. 24, 2017**	in-term only
Melrose	Dec. 31, 2014	Dec. 31, 2019	in-term and post-term
Reading	Jan. 23, 2014	Jan. 23, 2019	in-term and post-term
Wakefield	Feb. 4, 2014	Feb. 4, 2019	in-term and post-term
Winchester	**Sept 27, 2011**	**Sept. 27, 2016**	in-term only

The locations with dates in **bold** reflect those franchises that most acutely raise the issue of being "out-of-term," as those the locations were operating with month-to-month permission but Re/Max required those locations to negotiate and execute FA's. These two locations also had not previously agreed to a post-term non-compete. The locations with *italicized* text concern the related issue that those locations never executed a separate franchise agreement, but were operating with permission as satellites of the Melrose franchise, which permission Re/Max could revoke on ten days notice.[6]

In connection with its nine offices, Leading Edge employed about 200 sales agents. Leading Edge leased space for each of its nine locations, and continued to do so through the time of trial. By the time of trial, Leading Edge agents totaled about 160.

D. Leading Edge Expansion and its Focus on Staggered Terms

During the summer of 2016, Leading Edge encountered an opportunity to expand its existing locations to include Belmont and Cambridge, which were attractive real estate markets contiguous to existing LE locations. Specifically, LE wanted to acquire existing brokerages affiliated with the Hammond realty brokerage. For LE, the prospect of additional franchises raised the issue of staggered termination dates. Spurred by the potential acquisition, LE wanted

[6] Boston (South End) also needed to execute an FA, but was not subject to termination on ten days notice.

to discuss with Re/Max issues surrounding franchise renewals, including staggered expiration dates and LE's desire to have a unified (or "coterminous") termination date for its franchises.

On July 19, 2016, O'Koniewski and Mydelski traveled to Toronto, Canada, and met with several senior representatives of Re/Max: Walter Schneider, president; Pamela Alexander, CEO; Daniel Breault, Executive V.P. and Efram Barak, CFO. The parties discussed LE's potential acquisition of Hammond offices in Belmont and Cambridge. LE also raised broader issues related to franchise renewals and contract terms. LE requested three changes in connection with upcoming franchise renewals. Namely, Leading Edge asked that Re/Max: 1) allow a single termination date for its multiple franchise agreements; 2) remove the post-term non-compete provision; and 3) end the requirement that LE principals personally guarantee LE obligations. Re/Max's initial reaction to those requests was pessimistic, a "firm No" on all three requests, according to Breault. Nonetheless, Re/Max agreed to consider the requests and continue the discussion. Re/Max also agreed to work with LE to accommodate the Belmont/Cambridge expansion. At the end of the meeting, Walter Schneider told O'Koniewski that the parties would be able to "work it out" and encouraged LE to proceed with the expansion.

The power-point slides used by Leading Edge at the July 2016 meeting reflect that, from the outset of the parties' discussions, Leading Edge candidly shared its goals and demands. It desired to expand and to do so as a Re/Max franchise, but it insisted that Re/Max: i) provide Leading Edge a unified expiration date for all its franchises; and ii) eliminate the post-term non-compete for Leading Edge. Leading Edge, as a successful franchise in an important market, perceived that it had the leverage to get those contractual concessions from Re/Max, and sought to persuade Re/Max that those changes would advance the interests of both parties.

Immediately after the July 19 meeting in Toronto, the timing of the Belmont/Cambridge transaction became urgent. LE told Re/Max that the acquisition required prompt action. To facilitate the transaction rather than waiting to address all potential issues related to FA renewals, LE signed "Satellite Authorization Agreements" in September 2016. The agreements allowed Cambridge and Belmont to operate as satellite locations of LE's Melrose franchise for 90 days, with the agreement that Leading Edge would sign ten-year franchise agreements for those two offices on "mutually agreeable terms" within 90 days of the satellite authorization. Ex. 20 (Satellite Agreement), at pp. 1-2. LE paid up to $1.2 million (to be paid over time) to acquire the two Hammond brokerages and began to operate them as Re/Max franchises. Re/Max later twice extended the 90-day deadline for signing franchise agreements. The negotiation to reach mutually acceptable terms for Belmont and Cambridge FA's continued through June 2018. From the time Belmont and Cambridge were authorized as satellites, LE paid Re/Max fees for those locations required under the Melrose FA.

Re/Max's accommodation of Leading Edge's proposed expansion—on an expedited timeline—reflects Re/Max's general position on franchise expansion. Re/Max encourages its franchisees to expand to multiple offices, and specifically encouraged and promoted LE's expansion. In its FDD's, Re/Max explained to its franchisees that its experience indicated a "direct correlation" between the potential success for a particular franchise in a given market area and the number and proximity of additional Re/Max offices in the same market area. Re/Max believed that when one Re/Max office achieved a "Premier Market Presence," all franchisees in the same area enjoyed the benefits of increased industry and public awareness. When Pamela Alexander described the coaching and assistance that she and Walter Schneider provided Hamblin and O'Koniewski when they were new Re/Max franchisees, her advice and

coaching related to expansion of the franchise—in the form of increasing the number of agents and the number of locations.

Leading Edge's requests at the Toronto meeting started a negotiation concerning contract terms that lasted for almost two years. The context for that negotiation was: (i) the staggered expirations of various LE franchise agreements, which Re/Max wanted LE to renew on current FA terms; and (ii) Re/Max's need to get LE's new locations (Belmont and Cambridge, and later Boston) under an initial FA.

E. Negotiations between Re/Max and Leading Edge, 2016-2018

LE's requests would have required Re/Max to alter certain terms of its FA's, but those alterations were at least feasible. From time to time, Re/Max made modifications to the terms of its FA's. Those modifications came in the form of side letters with franchisees, rather than altering the form FA.

Beginning at the July 2016 meeting, Leading Edge tied its renewal of expired and expiring FA's to its request that Re/Max provide a unified termination date for all LE franchises and eliminate the post-term non-compete. For the next two years, the parties negotiated those terms and others while Leading Edge's locations with expired FA's continued as month-to-month holdovers and its new "satellite" locations continued without an FA. Initially, Mydelski spearheaded the discussions for Leading Edge, and later, O'Koniewski took the lead. Breault and then Petrie directly handled the negotiations for Re/Max, occasionally involving Anderson and Schneider. Both sides involved their lawyers at various points. Although certain points in those negotiations are detailed below, every specific step is not vital to this decision. The most salient points of this two-year period of negotiations are that: i) both sides drove a hard bargain

and sought to exercise their contractual rights and the business leverage they thought they had; and ii) they could not ultimately resolve their disparate positions.

After the July 2016 Toronto meeting, the pace of negotiation was slow. Re/Max, however, demonstrated its willingness to work with Leading Edge in the manner it accommodated LE's Belmont/Cambridge expansion and the incentives it offered to promote that expansion. Then, on December 1, 2016, Re/Max made a meaningful concession with respect to the post-term non-compete. Instead of applying to owner/brokers in all circumstances, Re/Max offered to have the post-term non-compete triggered only by a termination for cause of a franchisee or non-renewal without proper notice. See Ex. 103 (Dec. 1, 2016 email and attached revision). At that time, Breault and Mydelski also were negotiating FA terms for Belmont and Cambridge locations. Breault offered financial incentives and the parties anticipated a ten-year term consistent with the Satellite Authorization Agreement. Mydelski and LE appeared to agree on the Belmont and Cambridge terms, according to a January 11, 2017 email from Mydelski to Breault. See Ex. 27.

Despite this apparent progress, in the first quarter of 2017 it became clear that Mydelski's email did not reflect the view of the LE ownership team. On March 13, 2017, leaders of Re/Max and LE participated in a video conference. Re/Max made a proposal. O'Koniewski and Mydelski requested that Re/Max modify the LE FA's so that all agreements expire on a single date and none of the agreements contain a post-termination non-compete provision.

On March 21, 2017, Leading Edge's lawyer, Robert Bell, sent a letter to Dan Breault concerning the parties' discussions and renewal of FA's. In the letter, Leading Edge: a) requested a unified end date for all LE franchises; b) argued that Re/Max's post-termination non-compete was unenforceable and stated LE would not agree to it; c) objected to providing its

phone numbers and websites to Re/Max at the end of its FA's as required by the FA's; d) disagreed that Re/Max had provided LE any "confidential information" as set forth in the FA's; and e) requested exemption from minimum office size and staffing requirements for LE locations. Attorney Bell stated that LE was willing to renew its agreements but with these "conditions."

On May 25, 2017, Re/Max proposed to Leading Edge a "Go Forward Plan," which it then modified on June 12, 2017. That "plan" offered several incentives to Leading Edge including reduced fees, but it did not provide a coterminous expiration date or waive the post-term non-compete.

On June 15, 2017, Leading Edge sent Re/Max a "counter-proposal" to the "Go Forward Plan," which the parties came to call the "Nine Point Plan." Although LE had previously focused discussions on three demands (coterminous end date, the non-compete and personal guarantees), the nine point proposal introduced several additional issues. LE proposed a unified expiration date of September 17, 2019 (three months earlier than the last expiration date already in effect), to remove personal guarantees, and accepted and sweetened a variety of fee reductions and promotional incentives that Re/Max had offered in connection with Belmont and Cambridge. LE also proposed to "cap" the total fees paid to Re/Max—management, promotional and 1% of commissions—to $500,000 per year, significantly below the amount LE paid in 2016 and 2017.

On July 24, 2017, O'Koniewski, Mydelski and Chuha again met with Schneider, Alexander, Breault and Barak in Toronto. The parties had agreed in advance that their meeting and discussions would be confidential.[7] LE again raised its contract requests, and Re/Max

[7] In June 2017, Steven Fierman, an attorney with Nixon Peabody and outside counsel to Re/Max, corresponded with Attorney Bell concerning the approaching meeting. Fierman wrote: "This confirms that the settlement discussions will be conducted pursuant to FRE 408, and that, for the avoidance of doubt, any and all communications between

remained pessimistic it would meet those demands. At this meeting, Re/Max—not Leading Edge—raised the prospect of LE selling its operations. LE was surprised at Re/Max's idea. After an LE-internal side meeting, LE said it would consider a sale, and suggested a $5 million price. At that meeting, Re/Max CFO Barak asked to see LE's balance sheet and profit and loss statement to evaluate a potential sale.

After this meeting, Re/Max and LE executed a Non-Disclosure and Confidentiality Agreement effective retroactively to July 24, 2017. That agreement made clear that any information LE shared with Re/Max would remain confidential and not be shared outside the parties' "settlement discussions." See n.7, *supra*. Shortly after executing that agreement, Mydelski provided to Re/Max a copy of LE financial statements and a valuation report prepared for LE by Stephen Murray, an accountant specializing in valuations. The financial information was confidential to Leading Edge, and Re/Max was not entitled to it but for the sale discussions that commenced at the July 24, 2017 meeting. Re/Max leadership reviewed LE's financial statements. During a phone call among Alexander, Schneider, Breault and Barak, CEO Alexander shared her view that Leading Edge's position was not very strong, and she believed LE would eventually agree to whatever Re/Max demanded. Barak, the CFO, had a heated exchange with Alexander on that call, and his employment with ReMax ended three days later on August 20, 2017.

On July 31, 2017, LE Lexington's FA expired. In light of the ongoing negotiations, Re/Max allowed Lexington to continue as a holdover on a month-to-month basis, relying on Section 2.E of the FA, which allows an expired franchise to operate "on a month-to-month holdover basis" "with [Re/Max] permission," subject to termination on ten days notice in

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the parties regarding the upcoming meeting, and everything said at the meeting itself, will be treated as confidential settlement negotiations . . . ." Ex. 81 (June 30, 2017 email).

Re/Max's "absolute discretion." See, e.g., Ex. 13, Section 2.E at p. 7 (subject also to payment of fees and pro rata renewal fee).

In October 2017, Leading Edge raised with Re/Max another opportunity for expansion, which had been lingering for several months. LE had an opportunity to acquire an existing brokerage in the South End of Boston. Re/Max agreed to allow LE to open a third "satellite" office in Boston under the Melrose franchise, similar to the Belmont and Cambridge offices. By a satellite authorization letter dated October 13, 2017, Re/Max authorized Leading Edge to operate a location in Boston's South End as a satellite office under the Melrose FA until the earlier of: (i) the execution of a franchise agreement for that location; (ii) the disposition by approved sale or other transfer of the South End location; or (iii) December 17, 2019. Ex. 20. The authorization was conditioned on Leading Edge's continued compliance with all its Re/Max franchise agreements. Re/Max also granted LE a fee waiver benefit, allowing LE to avoid fees typically due, with respect to all non-Re/Max agents that join the South End office by November 30, 2017. That fee waiver was helpful to LE's ability to open the new office.

On or about December 7, 2017, Re/Max made a proposal to Leading Edge. This was effectively Re/Max's first response to Leading Edge's June 2017 overture, although the parties had discussed the sale idea and the South End satellite location in the interim months. As became the trend, Re/Max's proposal focused on incentives to make renewal more attractive such as fee reductions and promotional funds. It did not offer a unified expiration date.

On January 31, 2018, Leading Edge responded in writing to Re/Max's latest proposal. O'Koniewski wrote to Petrie that "we do not want to sell our company, but it is not our intention to sign staggered term contracts." O'Koniewski then made a nine point proposal that was substantively identical to the nine points proposed in June 2017 but with additional fee

concessions in favor of Leading Edge.[8] The letter closed: "We look forward to continuing these discussions to a mutually agreeable conclusion." Ex. 106.

The Re/Max executives involved in the negotiations viewed LE's nine-point plan as "outlandish." O'Koniewski's proposal asked for multiple changes to the form FA that Re/Max viewed as unacceptable and Re/Max viewed the renewed nine-point plan as a serious step backwards in the negotiations.[9]

F. Spring of 2018 and the Impasse in Negotiations

The FA renewal negotiations that began in June 2016 came to a head in the spring and early summer of 2018.

Re/Max had allowed the Leading Edge Winchester location to operate on a month-to-month basis from the expiration of the Winchester FA in September 2016 until June 2018. Re/Max likewise had allowed the Leading Edge Lexington location to operate on a month-to-month basis from the expiration of the Lexington FA in July 2017 until June 2018. Section 2.E of the Winchester and Lexington FA's allowed, but did not require, this month-to-month holdover status for these locations.

Especially after LE's reiteration of the nine-point plan, Re/Max was frustrated by what it perceived as LE's intransigence. Re/Max believed the negotiations were one-sided and

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[8] The principal differences between the June 2017 nine points and the January 2018 nine points were: i) LE no longer proposed a specific coterminous expiration date (September 17. 2019 in the first version), it instead demanded "coterminous contracts in all our locations;" ii) the locations not included in a renewal decreased, because certain LE offices had stopped operations; and iii) instead of franchises beyond Belmont, Cambridge and Boston being renewed at "previously agreed" fees, LE proposed a renewal fee of $5000 (about one-fifth of the standard FA renewal).

[9] The course of negotiations and all the evidence support the inference that the nine-point plan reflected a tactical change by the LE principals. For more than a year, LE had focused its negotiations on a unified expiration date and the non-compete, but got no traction from Re/Max. O'Koniewski took the lead on the negotiations and made a more comprehensive list of demands. LE's focus, however, remained on the same two contract terms. This is reflected in the fact that most of the additional demands in the nine-point plan never received serious attention in negotiations; the parties, especially LE, continued to focus on staggered terms and the non-compete.

increasingly believed that LE would not renew its franchises. Leading Edge likewise was frustrated by what it perceived to be Re/Max's intransigence. Re/Max had indeed offered incentives that provided real monetary value to LE, but it had not yielded on a unified expiration date, which was the provision that, in LE's view, made it impossible for LE to leave Re/Max and continue in the real estate business with the multi-point operation it had built.

On March 1, 2018, O'Koniewski met with Petrie at the 2018 Re/Max R4 conference in Las Vegas to discuss the parties' negotiations. O'Koniewski reiterated (as she had made clear in her January 31, 2018 letter and before) that Leading Edge needed a unified expiration date or it would not renew its FA's. Petrie stated, as she had before, that a unified expiration date was a "non-starter" but that Re/Max had flexibility on the non-compete clause. O'Koniewski did not say that Leading Edge was leaving Re/Max or terminating its FA's, although she certainly made clear that expired LE franchises would not be renewed if the parties did not resolve their differences.

In response to Leading Edge's request for a proposal, on March 13, 2018, Re/Max provided LE a new "Move Forward Proposal." Re/Max proposed a series of financial incentives, which it valued at "up to $1,000,000" to make renewal more attractive for LE's two expired locations, three satellite locations, and four in-contract locations. Provided LE acted by March 30th, Re/Max offered:

- $1 renewal fee for Winchester and Belmont (instead of $26,000);
- $1 initial franchise fee for Cambridge, Belmont and South End;
- No renewal fee for Reading, Arlington, Wakefield and Melrose if they renewed early;
- "Growth Incentive Credits" from 2019-2021 that would reduce ongoing fees.

Ex. 107. Re/Max offered to remove personal guarantees and, though it would maintain quotas for LE, there would be no fees or default based on failure to meet quotas. *Id.* These were unquestionably meaningful financial incentives and meaningful concessions. However, Re/Max did not offer a unified termination date, demanded ten-year FA's for the five out-of-contract locations, and did not mention the post-term non-compete. *Id.*

By email dated March 27, 2018, O'Koniewski reiterated that Leading Edge required a coterminous end date for all LE franchises and no post-termination non-compete in order to continue LE's relationship with Re/Max.[10] O'Koniewski stated that if the parties were at an impasse, as it appeared, then she proposed the parties discuss how to terminate the relationship in the most "professional and positive way possible," or, they could continue discussions if Leading Edge's two demands could be met. *Id.*

The parties held a videoconference on April 5, 2018, involving Petrie and Breault for Re/Max and all four Leading Edge owners. Leading Edge asked whether the parties should consider identifying a mutually agreeable end date to all of Leading Edge's franchise agreements. Petrie and Breault asked if Leading Edge was terminating its franchise agreements. The Leading Edge partners said they were not. They reiterated, however, that they would not renew contracts or sign new contracts unless Re/Max agreed to a unified termination date and eliminated the post-term non-compete. If those terms could not be resolved, then LE proposed to arrange a termination date for all franchisees. The Re/Max executives polled each LE principal to confirm that each of them did not intend to renew expired FA's, would not enter new FA's,

[10] Some of LE's communications, including this March 27 email, include the claim that the contract terms Re/Max demanded were unlawful or unenforceable: "Although both Integra and Leading Edge recognize these two provisions [staggered terms and post-term non-compete] are unenforceable and illegal in Massachusetts, it appears that we remain at an impasse." Ex. 85. The parties claims during negotiation about the contract's legality are not important to the negotiation, except for either side to signal that they believe they will be successful in court should their dispute reach that point.

and *sought* to terminate existing FA's. Each of the four principals so confirmed. This, however, was not the equivalent of stating that LE intended to terminate its existing FA's or that it would not honor its obligations under the in-force FA's. LE principals instead stated, as they had for months, that absent negotiation of a unified end date and no post-term non-compete, it would not enter new agreements and its current FA's would expire.

Leading Edge said exactly that in its April 13th letter following up the April 5th videoconference. It reiterated, again, that absent "co-terminous expiration dates on all of our franchise agreements" and exemption from the post-term non-compete, "there is nothing to discuss except a dignified and amicable parting." Ex. 108. Leading Edge then made its first proposal concerning the "parting" of LE and Re/Max. LE's proposal itself would have required Re/Max to (i) provide a unified termination date prior to expiration of the latest FA (Melrose) and (ii) waive the post-termination non-compete for LE. *Id.* The parties never continued any discussion of how to part ways in a "dignified and amicable" manner.

On April 20, 2018, Re/Max sent Leading Edge a long letter, which set forth Re/Max's view of the twenty-month negotiation history between the parties. The main point of the letter was to memorialize that, in Re/Max's view, Leading Edge had, by its recent statements and writings, told Re/Max that Leading Edge would not renew its expired or in-term FA's, would not enter FA's for LE's three authorized satellite offices, and "seeks an early termination of its remaining in-term FAs." Ex. 35, at p.7.

On April 24, 2018, Ms. O'Koniewski sent an email in response, also marked "Confidential For settlement purposes only Do not disclose." O'Koniewski disagreed with Re/Max's description of the parties' history, which she said "misrepresented" their communications. She then accurately wrote:

> "We have repeatedly told Integra that any continued negotiation between the parties would require amendment of our franchise agreements so that (1) all our franchise agreements for all our existing locations terminate on one date; and (2) Leading Edge is not bound by the one year post-termination non-compete provision contained in those agreements."

Ex. 83 (April 24, 2018 letter). O'Koniewski proposed that "the parties negotiate an agreement that provides that all of the franchise agreements for Leading Edge's existing locations are extended until December 31, 2019, and that the post-termination non-compete provisions in those agreements will not apply to Leading Edge." *Id.* At this point, Leading Edge intended to operate at *all* of their existing locations as a Re/Max franchisee until December 31, 2019, the date of the last FA expiration (Melrose).

Re/Max did not respond to LE's proposal. It took steps to exercise its contractual rights, discussed in Section G, *infra*.

Not surprisingly, in early 2018, both parties were preparing for the possibility that they would not resolve their differences. Leading Edge had conversations with other real estate companies. It had discussions with Compass, a fast-growing broker operation that made an overture about buying LE. LE later was interested in licensing Compass' technology platform, but Compass was unwilling to do so. LE also had communications with Sotheby's and Christie's. LE did not inform Re/Max of these conversations.

For its part, Re/Max was preparing for the eventuality that it would not reach a deal with LE and LE would leave the Re/Max system, whether gradually or otherwise. On January 26, 2018, Petrie, Re/Max's managing director, sent CEO Alexander an email captioned "planning Aloha," and attaching four documents. "Project Aloha"[11] had two alternative goals: first, to keep LE in the Re/Max system, and second, if that was not achieved, to replace Leading Edge's

[11] The name reflected Re/Max's view that Mydelski desired to retire and spend more time in Hawaii.

presence in the market, by recruiting replacement brokerages and recruiting as many Leading Edge sales agents as possible to stay in the Re/Max system, in either new or existing non-LE franchises. Petrie's planning documents outlined the steps Re/Max would take, and ultimately did take, if it could not get Leading Edge back under agreement. The planning documents included a "Project Aloha Action Planning Checklist" and one captioned "Defcon Action Planning."

Re/Max commenced Project Aloha in January 2018. Its early actions included "Poking the Tiger"—Breault was to call the most successful sales agents at Leading Edge to "have a general conversation." Ex. 109, at 2. For the first four months of 2018, Re/Max personnel focused on identifying brokers who could take over LE's locations and sales agents and preparing to recruit LE sales agents in the event LE did not renew its FA's. These efforts involved all of LE's locations. Re/Max planning documents included a line item indicating that "Brokers should encourage their agents to reach out to their Re/Max brothers and sisters and encourage them to stay — predatory recruiting." Ex. 34.

G. Re/Max Ends the Expired Franchises and Leading Edge Goes to Court

The negotiations had reached an impasse. Leading Edge required a unified termination date and elimination of the post-term non-compete clause. Especially with respect to the unified termination date, Re/Max had made clear it would enforce its existing contracts with respect to staggered termination dates, and would require staggered terms going forward.

On June 4, 2018, Re/Max delivered a letter to Leading Edge terminating the authorization for Leading Edge to operate the Cambridge and Belmont satellite offices effective June 12, 2018, unless Leading Edge executed franchise agreements with ten-year terms for those locations. Ex.

36 (June 4, 2018 Termination Letter).[12] As of June 4, 2018, Leading Edge had hoped and intended to continue operating the Belmont and Cambridge locations on a month-to-month basis. LE had not told Re/Max otherwise. As of June 4, 2018, Leading Edge had communicated its unwillingness to enter into FA's for those locations on Re/Max's offered terms, which included a ten-year duration. According to Alexander, Re/Max withdrew its authorization for Belmont and Cambridge because LE had several locations without a current FA and Re/Max feared LE would "try to run out the clock" and then sell their operations to another company. Alexander explained that she and Schneider made the decision to withdraw holdover permission because they were convinced LE would not renew its FA's and "enough is enough." Alexander's reference to "running out the clock" refers to LE not renewing expired contracts and operating month-to-month while awaiting the last FA expiration. Alexander's decision was influenced by another franchisee's departure from the Re/Max system five years before (involving Prestige, a multi-point franchisee), which she said left a big hole in the Re/Max system.

On June 7, 2018, Re/Max Regional delivered a letter to Leading Edge terminating Leading Edge's Lexington location and requiring that Leading Edge shut down and de-identify that location by Sunday, June 17, 2018. Ex. 37 (June 7, 2018 Termination Letter). Breault testified that Leading Edge's "lack of action" with respect to the Lexington renewal led Re/Max to believe they would not renew, so Re/Max terminated the franchise by withdrawing holdover permission. By virtue of the *in-term* non-compete clauses in the unexpired FA's, Leading Edge was not free to maintain operations at its Lexington location, for instance, as a non-franchised real estate brokerage.

[12] Re/Max attached to its June 4th letter a copy of Section 14.H of a form FA, containing a non-compete clause, but it was a form FA that Leading Edge had not signed.

On Monday, June 11, 2018, Leading Edge commenced this action. LE sought a temporary restraining order and preliminary injunction barring Re/Max from terminating any Leading Edge location pending a trial on the merits. After hearing, on June 21, 2018, I denied Leading Edge's request for preliminary injunction.

After its request for preliminary injunction was denied and in response to Re/Max's letters withdrawing permission to operate without an FA, Leading Edge closed its Lexington, Belmont and Cambridge locations in June. Leading Edge sought to arrange for its sales agents in those locations to work out of one of its in-term franchise locations. This approach was consistent with LE's obligations under its FA's. Breault testified that if one franchise location expired under its FA's, it was appropriate for LE to close that location and arrange for agents to work out of an in-term franchise location.

On June 25, 2018, Re/Max exercised its contractual right to withdraw its permission for Leading Edge to operate the Winchester franchise on a month-to-month holdover basis. In light of its unexpired contracts, Leading Edge was not free to maintain operations at its Winchester location, for instance, as a non-franchise real estate brokerage.

H. Re/Max Policy Directive Number One (2013)

In 2013, Re/Max issued Policy Directive No. 1 captioned "Predatory Recruiting Practices: Re/Max to Re/Max Sales Associate Recruiting Policy." The policy directive supplements each Franchise Agreement. Ex. 25.[13] It has remained in effect since it was issued, and therefore applies to, and supplements, all of the relevant FA's between Leading Edge and Re/Max.

[13] "The Provisions of this Policy Directive are in addition to and do not supersede or modify the provisions contained in any [Re/Max FA] currently in effect, except as expressly provided in this Policy Directive." Ex. 25 (Policy Directive No.1) at p. 4.

In the Policy Directive, Re/Max explained that "[s]ince [Re/Max's] inception, Re/Max ownership and Regional management have discouraged Re/Max Broker/Owners from competing with each other for existing Re/Max sales agents." Ex. 25. "Of particular concern is Sales Associate recruiting activity that through predatory practices aims purposefully to induce existing Sales Associates to change their Re/Max office affiliation." *Id.* Policy Directive No. 1 prohibits, and penalizes franchisees financially for, "predatory recruiting." Predatory recruiting includes, without limitation,

> "[t]he purposeful solicitation by a Re/Max office of existing Re/Max Sales Associates from another Re/Max office with the intention of seeking a change in office affiliation. . . . In particular, current Re/Max Sales Associates should not be invited to any recruiting, educational or other social event at another Re/Max office, other than "Grand Opening" or similar major events recognized by the Regional Office. Further, with respect to such recognized major events, where Re/Max Sales Associates . . . are invited . . . , but [their respective Broker/Owners or Managers] are not also invited, such Sales Associates invitations will be deemed to be predatory recruiting . . . ."

Id. Re/Max's cover memo announcing the policy, as well as Breault's trial testimony, explain that the policy directive was designed to avoid "the disruptive effects of predatory recruiting" upon Re/Max franchisees. *Id.*

I. June 26 to July 3, 2018: Re/Max Solicitation of Leading Edge Agents

The status quo on June 26, 2018, was that Leading Edge was closing its out-of-term locations in response to Re/Max's letters withdrawing holdover permission, and arranging for its agents to work out of in-term locations. This was consistent with Leading Edge's obligations under its four unexpired FA's.

From June 26-28, 2018, Re/Max issued several communications and held several meetings concerning its relationship with Leading Edge, directed at both non-LE broker/owners in the region and Leading Edge sales agents, as detailed below.

First, on June 26, 2018, Petrie for Re/Max emailed *all* existing Leading Edge sales agents, regardless of the location where they worked. Re/Max explained to agents that it had terminated Leading Edge locations in Cambridge, Belmont, Lexington and Winchester because Leading Edge refused to enter current FA's for those locations. Ex. 40. Petrie stated: "Re/Max Leading Edge has made it known publicly that they wish to leave the Re/Max system entirely. Based on a long history of conversations, we believe it is likely they will eventually sell their business. . . . we have terminated these offices to protect the Re/Max brand and our network of agents and broker/owners." *Id.* Re/Max advised sales agents of the court proceedings to date, and invited them to an informational meeting on June 27th at the Courtyard Marriott in Cambridge. Petrie stated:

> "*Whether you operate at one of the four offices closing, or any Re/Max Leading Edge office*, we have seamless solutions in place *for you to transfer to another Re/Max franchise*, and ensure the impact on your business is minimal. Transitioning to another Re/Max Leading Edge office will be, at best, a temporary move and may prolong the disruption of your business."

Id. (emphasis supplied).

Also on June 26, 2018, Petrie sent an email to Re/Max broker/owners and managers in New England, that is, the Re/Max franchisees other than Leading Edge. Ex. 41. The broker/owner email describes Re/Max's actions in substantively identical terms as the sales agent email. See *id.* With respect to recruiting LE sales agents, this email adds:

> "While this may have come as a surprise to Re/Max Leading Edge agents, we have been working closely with Broker/Owners across their primary service area of Eastern Massachusetts to ensure that every agent with Re/Max Leading Edge has the option to stay within the Re/Max system. Over the coming days we will be working closely with these Broker/Owners and the Re/Max leading Edge agents to help ensure all transfers are processed as seamlessly as possible.
>
> Note: If you would like to be added to the list of Broker/Owners who are interested in helping agents find a new Re/Max home, please contact Samantha Burke [at Re/Max]."

Id. Re/Max's description of its efforts to recruit LE sales agents, and its actual efforts, drew no distinction between sales agents in closed (expired) locations and those at locations that remained under contract. See *id.*

With respect to meetings, on Tuesday, June 26, 2018, Re/Max hosted a dinner at the Capital Grille in Burlington for approximately 30 people, mostly Re/Max franchisees in the area. As Breault testified, the purpose of the June 26th dinner was to explain to franchisees Re/Max's view that Leading Edge had terminated its franchise, that it was leaving Re/Max, and that all of its agents needed a home. Re/Max explained that Re/Max had withdrawn its permission for out-of-contract locations to operate month-to-month, having determined LE was leaving the system. Re/Max's invitation to the dinner, by email, included a directory of Leading Edge agents and administrators "for your recruiting efforts." Ex. 42. These directories provided the contact information for LE's agents and also showed the agents' recent sales history—the number of homes sold and the total value of those sales. Again, Re/Max drew no distinction between LE sales agents at closed offices or under-contract offices. See Ex. 42 (directories).

On Wednesday, June 27, Re/Max held its meeting in Cambridge to which it had invited all known LE sales agents, between 150-200 agents. That meeting was designed to encourage sales agents to stay in the Re/Max system and to help connect agents to the local non-LE broker/owners whom Re/Max had asked to attend the sales agent meeting, including at the Capital Grill the night before. The Cambridge meeting was poorly attended. Only a small fraction of LE agents, less than a dozen, attended.

Re/Max scheduled a second sales agent meeting. On June 27, following the Cambridge meeting, Re/Max again sent an email to LE sales agents, inviting them to a meeting on Thursday, June 28 at 10:00 a.m. at the Boston Marriott in Burlington. See Ex. 43. That meeting also was

also poorly attended. Overall, Re/Max's efforts to recruit LE sales agents to other Re/Max franchisees had very limited success.

After the events of June 26-28, Leading Edge terminated its relationship with Re/Max. Between June 28 and July 3, Leading Edge endeavored to "de-identify" each of its nine locations, that is, it sought to remove any use of the Re/Max name, trademarks, or licensed marketing tools from its locations. On July 3, Leading Edge emailed a letter to Re/Max stating that Leading Edge "acknowledge[s] the constructive termination by Re/Max of the [FAs] under which LE operated its Wakefield, Arlington, Reading and Melrose locations," as well as its satellite South End location. Ex. 45. LE stated that although Re/Max had not identified any default nor provided notice of termination as required under the FA, Re/Max's recent conduct had terminated the remaining FA's "by making it impossible for LE to continue to operate these locations as Re/Max franchises." *Id.* ("[W]e are simply acknowledging the reality that Leading Edge would be driven out of business if we tried to continue performing the remaining [FAs]."). LE stated it would de-identify from Re/Max and stop doing business with Re/Max entirely.

Also on July 3, 2018, LE announced to its real estate agents, the public and existing and former customers that LE was leaving the Re/Max system and would be operating as Leading Edge Real Estate. The announcement stated that LE would continue to operate in the same nine offices, obviously including the offices for which the FA's had not expired.

At the time of trial, Leading Edge continued to operate the same nine offices discussed above, as "Leading Edge" rather than "Re/Max Leading Edge," an independent (*i.e.*, not franchised) real estate brokerage.

J. The Parties' Perspectives on their Contracts and their Relationship

As is now obvious, central to this dispute are the interaction between staggered contract terms for multi-point franchisees and the non-compete provisions of the FA. The natural operation of the contract terms raises the question whether, and how, a multi-point franchisee can disengage from Re/Max and remain working (*i.e.*, competing) in the real estate business. Therefore, it is worthwhile to summarize the testimony of the principals on each side of this dispute on these central questions.

Leading Edge's perspective on its contractual rights and obligations is consistent and logical, though it faces the challenge posed by the text of the contracts. The LE principals knew when they entered and renewed six separate FA's that staggered termination dates could pose a challenge in the future. That challenge may not have been front-of-mind as LE renewed agreements in 2013 and 2014, but the principals were aware of the dynamic posed by staggered terms *if* a franchisee sought to leave Re/Max. This challenge became more acute as LE sought to expand into Belmont and Cambridge. LE was ready to invest up to $1.2 million to acquire those offices from Hammond.. LE knew that it likely would have to enter five-year FA's for those locations, but was reluctant to invest the money to expand its Re/Max franchise knowing that the staggered terms and non-compete clauses could effectively make it impossible to ever leave Re/Max (and continue in the business). LE was a very successful Re/Max franchise, and used its further expansion as the platform to try to negotiate a more flexible arrangement with Re/Max. LE perceived, correctly, that their current FA's would prevent LE from leaving Re/Max in a manner that allowed the LE principals to continue their multi-point operations. They set out to negotiate an alternative to that restrictive outcome. Because they were a major franchisee with a significant presence in the lucrative greater Boston market and paid significant fees to Re/Max

each month, LE believed it had the leverage to negotiate with Re/Max. Although LE made several different demands over two years, the full arc of negotiations shows LE's goals: a unified termination date for all franchises and to eliminate the *post*-termination non-compete provision. With a multi-point franchise, adjustment of those two contract features was required for Leading Edge to remain in business outside the Re/Max system. Given all the circumstances, those goals of LE were reasonable and unsurprising. But they were not attained.

The parties' negotiations, together with the trial testimony of Re/Max executives, likewise discloses Re/Max's perspectives and motivations. As a starting point, in response to my questions, Re/Max executives acknowledged, as they must, that Re/Max does *not* take the position that once a real estate broker becomes a Re/Max franchisee, that broker is obligated to remain with Re/Max for the duration of their real estate career. But after conceding that point, Re/Max executives were plain that the combination of staggered terms for multi-point franchises and the post-term non-compete, make it impossible or nearly impossible for a multi-point franchise to disengage from Re/Max *and* remain in the industry, without at least dismantling the operation they have built. Put another way, Re/Max makes it nearly impossible for its franchisees to compete against Re/Max in the future, whether as an independent business or with a different franchise. Re/Max implements that policy even though it also encourages franchisees generally, and encouraged Leading Edge specifically, to expand to include multiple franchise locations (each with a different FA and term).

The witnesses on all sides acknowledged the challenge posed by staggered termination dates. If a multi-point franchisee declines, for whatever reason, to renew a FA for one location, *both* the post-term *and* in-term non-compete provisions prohibit the franchisee from operating at the expired locations. As Breault made clear in his termination letters to LE, an expired location

must shut down. See Exs. 36, 37, 39 (Belmont/Cambridge, Lexington and Winchester termination letters, respectively). CEO Alexander explained that each time a franchise grows to another location, the way Re/Max "protects ourselves is to have agreements that are not co-terminous and to have in-term and post-term non-competes." The referenced "protection" plainly is protection from competition, as the combination of staggered terms and non-competes prevent a franchisee from competing in the future as a non-franchisee.

Given that dynamic, it is obvious why a multi-point franchise would request a unified termination date for its multiple locations, or a liberal allowance of month-to-month holdover status, which can serve the same purpose. Re/Max executives, however, stated that Re/Max would not permit a unified termination date (nor long-term holdover status until expiration of the latest FA). Re/Max executives testified that it had "always" been Re/Max's position that multi-point franchisees could not have a single expiration date.[14] Their explanations for that position relied, first, on the text of their contracts: Re/Max required an FA for each location, the FA's had a five-year term, and Re/Max preferred to have the benefits of those contracts. Beyond that position, Re/Max's description of its business needs or purposes served by those contract practices were vague and circular: CEO Alexander testified that it was "so difficult to contemplate" a single termination date for a multi-point franchise because it conflicts with Re/Max's responsibility to its parent. If Re/Max allowed a single termination date for multi-

[14] In fact, historically Re/Max had made limited exceptions to its "firm" position against a unified expiration date. First, it was common for multi-point franchises to operate certain locations on a month-to-month basis. Litigation between Re/Max and a Massachusetts franchisee, Prestige, of which Leading Edge was aware, disclosed that Re/Max had allowed Prestige to operate three locations on a month-to-month basis for about two years from 2012-2014. LE itself had operated Winchester and Lexington in holdover status for many months. This issue of "out-of-term" franchises was one that Petrie tackled system-wide beginning around 2016. Second, at least with respect to one multi-point franchisee in Connecticut, Re/Max had allowed expired locations to operate month-to-month until the last of five FA's expired, and then executed FA's for all five locations with a single termination date.

There was also evidence of ten side letters executed between Re/Max and franchisees in Massachusetts, New Hampshire and Maine that waived non-compete provisions for the franchisee.

point franchises, "a franchisee, you know, could choose to exit on the expiration of all their agreements." Breault, when asked about the interaction between the staggered terms and the non-compete provisions, testified "it's just the way the dates work" and that Re/Max "chose to manage the risk that way."[15] Although Breault did not identify the "risk" specifically, his testimony illuminates that the risk being managed is the risk of a franchisee leaving Re/Max, or more broadly, the risk of competition. Breault testified that a unified termination date could allow Leading Edge to sell its brokerage, after expiration, to a competitor of Re/Max. Breault referred to such potential competition as "destabilizing" to the Re/Max system, as it would leave sales agents without a home.[16] Breault testified that it "just doesn't feel right to [Re/Max]," to have former franchisees competing with Re/Max after their franchise relationship ends.

Re/Max executives, when asked how a franchisee could appropriately disengage from Re/Max as its FA's expired, consistently testified that franchisees had the option of: i) retiring and selling their ownership shares to a new owner, maintaining the Re/Max franchise; ii) selling their franchise, in whole or in parts, to an existing Re/Max franchisee; iii) selling to a non-Re/Max broker who wants to become a Re/Max franchisee; or iv) grooming new owners to take over the franchise. Not once, even upon probing, did a Re/Max executive describe a scenario

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[15] Re/Max testified, without explanation, that it was Re/Max's position that each franchise location in a multi-point franchise "stood on its own." Yet, the FA's contain a cross-default provision, which provides that if one franchise of a multi-point franchise defaults on its FA obligations, then all FA's shall be deemed in default. This is a significant limitation in favor of Re/Max to the concept that each franchise stands on its own.

[16] Breault's suggestion of concern for the harm to sales agents does not ring true. He envisions a scenario where an office closes entirely, rather than continues as an independent brokerage or with a different franchisor, that is, a scenario where a new competitor competes to hire sales agents. Moreover, Re/Max has no relationship with agents, who generally are free to move from broker to broker. Re/Max's overarching concern was to avoid or limit competition and to maintain its own revenue stream, which relied on successful franchisees.

Breault and Petrie also suggested that Re/Max was "invested" in franchisee marketing and promotion, and was not inclined to allow the benefits of Re/Max's marketing and promotion support to flow to a competing brokerage. But Re/Max was obligated to provide that marketing and promotion support under its FA's with franchisees and, of course, the franchisees funded Re/Max's efforts. This argument comes close to a contention that Re/Max is entitled to perpetual franchisees, or at least entitled to avoid competition from a prior franchisee.

where a former franchisee could remain working as a real estate broker outside the Re/Max system. This is telling. Re/Max executives do not acknowledge a scenario where a former franchisee can continue to operate, and obtain the benefits from, a multiple-location real estate brokerage. It is clear that, from Re/Max's perspective, that is the objective of the staggered terms and non-competes for multi-point franchisees.

This testimony reveals that the motivation behind Re/Max's contracting practices—namely the staggered termination dates for multi-point franchises and post-term non-competes—is to restrain competition from former Re/Max franchisees, to make it impossible or exceedingly difficult for a franchisee to extract itself from Re/Max and to compete against Re/Max after franchise expiration. Whether that is permissible is a legal question discussed below. But in the absence of other explanations, Re/Max's trial testimony lays bare the anticompetitive motivations behind its contracting practices.[17]

K. Facts Related to Franchise Disclosures and Accounting Requirements

Federal law requires that, prior to execution of a franchise agreement, franchisors provide franchisees a Franchise Disclosure Document ("FDD") containing specific items of material information concerning the offered franchise. 16 C.F.R. § 436. Re/Max provided FDD's to Leading Edge in connection with each FA, original or renewal, signed by Leading Edge. Re/Max required Leading Edge to sign a receipt for each FDD confirming that the FDD was required, had been disclosed, and that if the FDD contained any "false or misleading statement, or material omission, a violation of federal and state law may have occurred and should be reported to the [FTC]."

[17] To the extent Re/Max seeks to rely on the expert testimony of Michael Seid to explain how staggered terms and non-compete provisions serve to protect the franchise system, I did not find Mr. Seid's testimony persuasive and do not credit it.

Mydelski reviewed portions of the FDD's and portions of the FA before signing, and informed his LE co-owners of the results of his review before executing FA's. Mydelski reviewed the Re/Max financial statements that were part of the FDD's. He also reviewed Item 17 of the FDD, which explained that the term of the FA was five years but that Re/Max "may" extend that term in certain circumstances.

Consolidation of Re/Max Promotions Operations

Re/Max New England Promotions, Inc. ("Re/Max Promotions") is a wholly owned subsidiary of Re/Max Integra and is the entity that administers the "promotion fees" and "Hot Air Balloon" fees collected from Re/Max franchisees including Leading Edge. Re/Max Promotions is designed to spend the fees collected from franchisees on the advertising of Re/Max real estate brokerage services. Alexander, a director and the CEO of Re/Max, is also a director and CEO of Re/Max Promotions.

Generally accepted accounting principles ("GAAP") in the United States require that the operations of a wholly owned subsidiary be consolidated with the operations of the parent for purposes of financial reporting. Accordingly, the operations of Re/Max Promotions should have been consolidated with those of Re/Max on Re/Max's financial statements. The financial statements of Re/Max for the fiscal years ending December 31, 2014, 2015 and 2016, which were disclosed at Item 21 of the FDD's issued by Re/Max, did not consolidate Re/Max Promotions operations with Re/Max operations. Due to the lack of conformity with GAAP, Re/Max's external accounting firm issued a "Qualified Opinion" on Re/Max's financial statements for fiscal years ending December 31, 2014, 2015 and 2016.

Re/Max restated its financial statements effective May 25, 2017. The re-statement consolidated Re/Max Promotions' operations with those of Re/Max. The restated, consolidated

financial statements included previously undisclosed revenue, expense and liability information related to recording and use of franchisee-paid promotion fees.

Leading Edge signed FA's which were accompanied by the FDD's that contained the non-GAAP financial statements which did not consolidate Re/Max Promotions' operations. Specifically, Leading Edge signed the Melrose, Wakefield, Reading and Arlington FA's after reviewing FDD's that contained the non-compliant Re/Max financial statements.

Representations about Promotional Fees

Re/Max's FDD's in 2013 and 2014 suffered another infirmity related to Re/Max Promotions. Those FDD's stated that the promotional fees paid by franchisees were paid to Re/Max and administered by Re/Max Promotions and that "no money from the Promotion Fee or the Hot Air Balloon Fund Fee was used for activities that are principally the solicitation of franchises," as distinct from promoting existing franchises, *i.e.*, institutional advertising. However, Re/Max occasionally provided discounts to franchisees.

By way of example, Re/Max allowed some franchisees to reduce their per-agent promotional fee to $99 (from $165-$180) in exchange for increasing their transaction fee from 1% to 5% or 6% of all commissions earned. These fee reductions should have been allocated pro rata between operations and promotions funds, but instead, a larger portion of the fee reductions were funded from the promotional side of Re/Max. For instance, when the transaction fee increased in connection with a promotional fee discount (the so-called 99/6 plan), all of the increased transaction fee was allocated to operations. This had a positive impact on the operations, as opposed to the promotional funds. CFO Barak refused to sign the financial statements for Re/Max Promotions because of these allocation practices. Ultimately this method

of accounting for discounts contradicts, or at least undermines, Re/Max's statements in its FDD's that all the money collected for promotions is used for that purpose.

Item 17 Regarding the Franchise Agreement Term

Mydelski reviewed Item 17 of the FDD before LE executed FA's in 2013 and 2014. He was aware that the term of each FA was five years, and was also aware that Re/Max may extend the term duration, particularly to accommodate multi-point expansion of franchises. When Leading Edge signed its FA's in 2013 and 2014, Mydelski was *hopeful* that Re/Max would adjust LE's termination dates and provide a single termination date. Mydelski, however, also understood that Re/Max was not *obligated* to adjust LE's termination dates, and it might not happen. The other LE co-owners shared that understanding.

Re/Max did not disclose to Mydelski or anyone else affiliated with LE in 2013 or 2014 in connection with FA renewals that it was Re/Max's firm position that multi-point franchises would not be granted a single expiration date.[18]

Conclusions of Law

A. Leading Edge's Claim for Fraudulent Inducement of the Franchise Agreements

Leading Edge contends its FA's should be set aside because Re/Max fraudulently induced LE to enter into those FA's. Leading Edge alleges Re/Max misrepresented or failed to disclose material information in the FDD's which accompanied Leading Edge franchise renewals, specifically that:

1) Item 17(a) of certain FDD's was misleading because it identified the five-year term for the FA and stated that "to facilitate mergers or conversions or other large transactions, as well as to accommodate existing franchisees that acquire additional offices, Re/Max Regional *may* provide for a longer franchise term." (emphasis supplied). LE further argues that, at the time Re/Max made this disclosure, it failed to tell LE that Re/Max's actual, firm position was to deny multi-point franchises a

[18] Discussion of certain additional facts concerning whether Leading Edge relied upon Re/Max's disclosures in the FDD is reserved for the conclusions of law. See Section A and D.1, *infra*.

coterminous expiration date by declining to allow either longer term FA's or month-to-month holdover permission for expired franchises.

2) Re/Max misled Leading Edge by failing to consolidate the operations of its subsidiary, Re/Max Promotions, with those of Re/Max in the Re/Max financial statements disclosed in certain FDD's. This practice did not conform to GAAP and therefore Re/Max's financial statements did not conform to the FTC Franchise Rule, which Leading Edge contends makes Re/Max's disclosure of financial statements a misrepresentation and a non-disclosure of material facts.

To set aside its franchise agreements due to fraudulent inducement, Leading Edge must show "misrepresentation of a material fact, made to induce action, and reasonable reliance on the false statement to the detriment of the person relying." *Hogan v. Reimer*, 35 Mass. App. Ct. 360, 365 (1993); *Commerce Bank & Trust Co. v. Hayeck,* 46 Mass. App. Ct. 687, 692 (1999) (fraudulent inducement requires elements of common law deceit).

Leading Edge's claim for fraudulent inducement fails because it cannot satisfy the reasonable reliance or causation requirements. Item 17(a) on its face provides Re/Max the discretion to adjust the length of franchise agreements, particularly in the context of franchisee expansion to new locations, but it does not obligate Re/Max to do so. See, e.g., *Kingdomware Techs., Inc. v. United States*, 136 S. Ct. 1969, 1977 (2016) ("Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement"); *Cohen v. Board of Water Comm'rs, Fire Dist. No. 1, S. Hadley*, 411 Mass. 744, 752 (1992) ("The word 'may' is one 'of permission and not of command.'"), quoting *Brennan v. Election Comm'rs of Boston*, 310 Mass. 784, 786 (1942). The discretion inherent in Item 17(a) makes that disclosure a poor basis for Leading Edge's fraud claim, especially when both sides to the FA are sophisticated businesspersons.[19]

[19] See, e.g., *Armstrong v. Rohm and Haas Co., Inc.*, 349 F. Supp. 2d 71, 76-77 (D. Mass. 2004) (contractual language precludes a claim of fraud in the inducement "where the parties are sophisticated persons or entities represented by counsel, the contract at issue was fully negotiated, and the alleged misrepresentations expressly contradict specific language of the written agreement").

Not only could Leading Edge not *reasonably* rely on Item 17(a) to provide certainty on the issues posed by staggered expirations for a multi-point franchise, Leading Edge did not *in fact* rely on Item 17(a) to provide certainty. Both Mydelski and O'Koniewski acknowledged that Re/Max's approach to staggered terms and contract duration was discretionary and that Re/Max was not *obligated* to extend the term of earlier expired FA's. Leading Edge was aware of the challenge posed by staggered terms back when it signed FA renewals for multiple locations. Leading Edge thought it would be able to address the challenge if and when it became necessary.[20] Item 17(a) and Re/Max's statements about staggered terms more generally do not support Leading Edge's fraudulent inducement claim.

Re/Max's financial statements and its failure to consolidate Re/Max Promotions with its parent Re/Max also do not serve as a basis for fraudulent inducement as a factual matter. It is true that for three relevant years, the Re/Max financial statements that were part of its FDD's failed to consolidate the operations of Re/Max Promotions, a wholly owned subsidiary. In this manner, Re/Max failed to conform to GAAP and accordingly failed to conform to the FTC Franchise Rule. The evidence at trial did not satisfy Leading Edge's burden to show that it relied on this aspect of Re/Max's financial statements to its detriment. Had Re/Max properly disclosed Re/Max Promotions' financial statements, Leading Edge would have seen the amount of money Re/Max collected in promotional fees and the amounts

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[20] Because the potential issues posed by staggered terms and staggered expirations are readily apparent once a franchisee enters multiple FA's, and because Item 17(a) of the FDD highlights Re/Max's discretion in addressing those issues, fraudulent inducement cannot be supported by Re/Max's nondisclosure that its *actual* position is that it never provides coterminous end dates and that it will insist that multi-point franchises close down locations upon expiration. As between sophisticated businesspersons, accepting this form of nondisclosure is the equivalent of imposing a provision into the contract that contradicts an expressed provision (namely, Item 17(a) reserving discretion to Re/Max). Moreover, Re/Max demonstrated some flexibility on the issue, though not enough to satisfy Leading Edge. Re/Max did allow more than a year of month-to-month holdover status for expired locations, extended the satellite location permission much longer than anticipated, and apparently offered coterminous dates to at least one multi-point franchisee other than LE.

Re/Max Promotions actually spent in advertising and other brand support. Leading Edge presumably would have seen that Re/Max Promotions did not spend all the money collected by Re/Max for this purpose. I credit Mydelski's testimony that Re/Max financial statements were one of the three aspects of the FDD's that he reviewed carefully before signing FA's (along with fees and summary of contract terms). But there was no credible testimony that if Leading Edge had received properly consolidated financial statements and learned more about Re/Max Promotions' operations that such information would have impacted Leading Edge's decision to renew. Nor do I infer that conclusion from the trial evidence. I determine that the disclosure of proper financial statements would not have impacted Leading Edge's decision to renew FA's. Re/Max's failure to disclose Re/Max Promotions' financial information as part of Re/Max's financial statement therefore does not support Leading Edge's claim that Re/Max fraudulently induced LE to sign its FA's.

Whether these FDD disclosures support liability under c. 93A is discussed in Section D.1, *infra*.

B. Leading Edge's Claims for Breach of Contract, Breach of the Covenant of Good Faith and Fair Dealing, and Leading Edge's Obligations under the Unexpired Franchise Agreements

Because Re/Max's conduct between June 26-28 provides the basis for Leading Edge's claims for breach of contract, breach of the implied covenant of good faith and fair dealing, and that Re/Max's breach excused Leading Edge's further performance under the four unexpired franchise agreements, these claims are discussed together.

By the end of June 2018, Re/Max had withdrawn its permission for LE's Winchester and Lexington locations to operate month-to-month in the absence of a renewed FA, and had withdrawn its permission for Belmont and Cambridge to operate as satellite offices because

those locations never entered an FA as promised and anticipated. Each of those terminations was consistent with Re/Max's contractual rights. Given that the parties' long negotiations had reached a deadlock, these actions were Re/Max's justifiable next step in exercising its contractual rights. They cannot provide a basis for Leading Edge's breach of contract claims.

Therefore, Leading Edge's contract claims rely on the four FA's that remained in force—Arlington, Reading, Wakefield and Melrose. Leading Edge contends Re/Max's conduct between June 26-28 breached those four FA's. It also contends that Re/Max's breach was material such that Leading Edge was excused from its continuing obligations under those unexpired FA's.

1. Breach of Contract

Leading Edge contends that Re/Max breached the terms of the FA's when it violated Policy Directive No. 1 by recruiting LE sales agents—including agents who worked at a terminated location *and* those who worked at a location that remained under contract—to non-LE Re/Max franchisees and encouraging those Re/Max franchisees to do the same. Re/Max contends that the Policy Directive does not apply to Re/Max itself and that, in any event, it did not violate the Policy Directive because its conduct is permitted by the terms of the FA's.

I agree with Leading Edge. Re/Max's conduct in June 2018 as some LE franchise locations expired and others remained operative, breached the unexpired FA's between Re/Max and Leading Edge.

As a threshold matter, there is no dispute that, from its issuance in 2013, Policy Directive No. 1 became part of the FA's between the parties, including the four unexpired FA's. The Policy Directive supplements, but does not displace, the terms of Re/Max's FA's. See Ex. 25 (Policy Directive No.1) at p. 4 ("The Provisions of this Policy Directive are in addition to and do not supersede or modify the provisions contained in any [Re/Max FA] currently in effect, except

as expressly provided in this Policy Directive."). Therefore, the terms of the Policy Directive and the FA's must be considered together and interpreted as a whole to give meaning to all provisions. See *MCI Worldcom Commc'ns, Inc. v. Department of Telecom. and Energy*, 442 Mass. 103, 112-13 (2004) (parties' intent ascertained from words of agreement, taken as a whole, and surrounding facts and circumstances); *Charles I. Hosmer, Inc. v. Commonwealth,* 302 Mass. 495, 501 (1939) (must give meaning and effect to all terms, construing entire instrument "as a workable and harmonious means" for effectuating intent of the parties). Thus, if Re/Max violated the Policy Directive, it breached its FA's with Leading Edge.

There can be no doubt that Re/Max's conduct, regardless of its arguments on the proper scope of the Policy Directive, implicates squarely the purpose and intent of the Re/Max policy against predatory recruiting. The Policy Directive prohibits the "purposeful solicitation" by one Re/Max office of sales agents from another Re/Max office "with the intention of seeking a change in office affiliation." This describes precisely Re/Max's actions (subject, though, to Re/Max's argument that it is not a Re/Max "office"). The policy reflected Re/Max's longstanding policy to "discourage" Re/Max franchisees from competing with other franchisees for existing Re/Max sales agents, but Re/Max explicitly *encouraged* its franchisees to do exactly that. The policy addressed the "particular concern" of recruiting that "aims purposely to induce existing Sales Associates to change their Re/Max office affiliation." This is exactly what Re/Max aimed to do with respect to LE's agents at unexpired locations. Finally, the policy is designed to avoid the "disruptive" impact of predatory recruiting on the operations of Re/Max franchisees. Here, all parties agreed that the business and revenue of a real estate brokerage depends on the work of sales agents and the ability to attract and retain sales agents to generate commissions. As leading Edge described it in its July 3 letter, Re/Max's efforts to recruit sales

agents away from LE to competing offices, "made it impossible" for Leading Edge to continue its business operations.

The appearance that Re/Max's conduct plainly violated its predatory recruiting directive, Re/Max contends, does not tell the full story. Re/Max relies on two legal interpretations to defend its breach of contract: (i) that the Policy Directive does not apply to Re/Max itself; and (ii) that its actions vis-à-vis LE agents cannot violate the Policy Directive because they are permitted by other terms of the FA. Neither defense withstands scrutiny.

First, Re/Max argues that the Policy Directive does not apply to Re/Max itself, only its franchisees. In other words, predatory recruiting—soliciting agents away from a Re/Max franchise—is improper if done by a competing franchisee but allowed if performed by Re/Max itself. This interpretation would allow the elimination of the Policy Directive's protection to franchisees, at the decision of Re/Max. Though *franchisees* may not take action to undermine a fellow franchisee, if Re/Max deems it appropriate to punish an in-term franchisee by recruiting away agents—who are essential to a franchise's revenue, and success—it may do so. This interpretation makes no sense and eviscerates the very protection offered franchisees by the Policy Directive. See *Starr* v. *Fordham*, 420 Mass. 178, 190 (1995) (contracts to be construed with reference to "the objects sought to be accomplished"); *Shea v. Bay State Gas Co.*, 383 Mass. 218, 225 (1981) (contract language must be construed "to give it reasonable meaning wherever possible"); *Baybank Middlesex v. 1200 Beacon Properties, Inc.*, 760 F. Supp. 957, 963 (D. Mass. 1991) (contract should not be interpreted so as to render any terms meaningless).

Further, here Re/Max did *not* seek to implement predatory recruiting on its own. It recruited and relied on broker/owners to actively participate and carry out themselves the

predatory recruiting prohibited by the Policy Directive.[21] Re/Max's recruitment and employment of competing broker/owners to solicit LE agents brings Re/Max's conduct within the policy, *even if* the policy directive could be interpreted differently if Re/Max acted on its own.[22]

Re/Max's second contention is that when Re/Max recruited LE agents to non-LE offices *and* encouraged and arranged for competing franchisees to recruit LE agents to non-LE offices, its conduct was expressly permitted by the FA's. Re/Max relies principally on Paragraph 14.F of the unexpired FAs:

> "to facilitate an orderly and efficient transition to preserve the goodwill associated with the Re/Max name and Re/Max Marks in the event of termination or expiration of this Agreement, you expressly agree that we shall have the right to contact and communicate personally with any or all of your Sales Associates to solicit and/or discuss with them their options for continued affiliation with other Re/Max offices and/or opportunities to purchase a Re/Max franchise:...(iv) immediately after we have determined that you intend to terminate or have terminated your franchise."

Franchise Agreements, Exs. 11-19, Section 14.F.[23] Re/Max also points to more general provisions at Section 5.A and 8.F which both provide Re/Max "the right . . . to communicate

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[21] A contract provision should not be interpreted to allow prohibited conduct (here, predatory recruiting) to be carried out so long as it is conducted jointly with Re/Max, rather than independently by other franchisees.

It is not surprising that the Policy Directive does not identify Re/Max itself on the topic of recruiting sales agents. Re/Max does not employ sales agents and therefore would not recruit sales agents to Re/Max itself. That does not mean that the Policy Directive was designed to allow Re/Max to spearhead and carry out the predatory recruiting that its franchisees cannot. Instead, the permissibility of Re/Max's conduct will turn on whether other provisions of the FA's allow it. See discussion *infra*.

[22] Of note, even if the Policy Directive did not apply explicitly to Re/Max, it is relevant, and important, to the contours of the implied covenant of good faith and fair dealing in the contracts between Re/Max and Leading Edge.

[23] Re/Max relies on clause (iv) to justify its recruitment of LE sales agents. The other triggers in Section 14.F do not apply because the four unexpired FA's were not yet within 180 days of expiration, none had expired, and none had been terminated upon notice of default from Re/Max. See Section 14.F (i), (ii) and (iii).

directly with your Sales Associates concerning any matter that we deem necessary or appropriate relating to the System or your Office."

Re/Max executives testified that by June 26, 2018, they had "determined" that LE "intended to terminate" the unexpired FA's and therefore Section 14.F(iv) was satisfied. However, their trial testimony and the parties' long negotiations history make clear that what Re/Max had "determined" was that Leading Edge would *not renew* its FA's and instead each FA would expire on its terms.[24] This "determination" cannot satisfy Section 14.F(iv) because allowing FA's to expire and "terminating" an FA are not the same thing under the governing FA's. The FA's dedicate an entire section—Section 13—to the concept of "termination" of a franchise. None of the bases for termination set forth in Section 13 are at issue in this case, and Re/Max did not provide any of the notices or opportunities to cure mandated by Section 13. "Expiration" of an FA is different and is expressly addressed in Section 14.F(i) and (ii): Re/Max's communications with sales agents are allowed *upon* expiration or *within 180 days of* expiration, neither of which had occurred with respect to the four unexpired FA's. See, e.g., *Tupper v. Hancock*, 319 Mass. 105, 109 (1946) ("[E]very word or phrase of an instrument is if possible to be given meaning, and none is to be rejected as surplusage if any other course is rationally possible."). Section 14.F therefore did not authorize Re/Max's communications with LE agents in late June 2018.[25]

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[24] Leading Edge had asked Re/Max for an earlier expiration date and for one date for all franchisees, but at no point did Leading Edge say it would terminate any franchise early.

[25] Re/Max would have a different, and stronger argument under Section 14.F(i) had it limited its recruiting efforts to LE sales agents who worked at the LE locations where the FA's had expired, or if it handled all agent communications itself without employing the broker/owners in their plans. But those are not the facts of this case. Re/Max made clear its solicitations were directed at all LE agents, including those at locations still under contract. The trial evidence makes equally clear that Re/Max's purpose was not simply to provide agents an opportunity to stay in the Re/Max system, it was to hurt Leading Edge's business because LE had declined to renew, even though four franchises had up to eighteen months remaining as Re/Max franchisees.

This leaves Re/Max to rely on the provisions of Section 5.A and 8.F which more generally permit Re/Max "to communicate directly with your Sales Associates concerning any matter that we deem necessary or appropriate relating to the System or your Office." These provisions do not authorize Re/Max's recruiting conduct for at least two reasons. First, these provisions do not refer to recruiting, or even sharing "options to continue" with a Re/Max franchise; they reflect a general authority for Re/Max to reach a franchisee's sales agents to share information related to "the System or your Office." To the extent Re/Max seeks to rely on those clauses for their recruiting communications, the more specific provisions of Section 14.F—which concerns opportunities for sales agents to continue in the Re/Max system—must control. See *Rush v. Norfolk Electric Co.*, 70 Mass. App. Ct. 373, 381 (2007) (applying "conflicting clauses" rule to resolve contract interpretation dispute); *Lembo v. Waters*, 1 Mass. App. Ct. 227, 233 (1973) (if inconsistency appears between general clause and a more limited and specific clause, the latter generally controls).

Second, all of the relevant FA provisions—sections 14.F, 5.A and 8.F—must be interpreted in congruence with Policy Directive No. 1. On the relevant topic of recruiting a franchisee's sales agents to join a competing franchise, the Policy Directive is the most specific contract provision. And, the Policy Directive does not conflict with the other FA terms, properly interpreted. See *McMahon v. Monarch Life Ins. Co.*, 345 Mass. 261, 264 (1962) (contracts construed to give reasonable effect to all provisions); *Charles Hosmer, Inc.*, 302 Mass. at 501 (every phrase and clause to be given effect, construing the contract as a harmonious whole). When the Policy Directive is given effect along with the other FA terms that concern Re/Max's communications with sales agents, it is plain that the recruiting of LE agents carried out by

Re/Max in late June 2018 was not authorized under any provision of the FA's. It was prohibited by the Policy Directive and thereby breached the unexpired FA's.

2. Breach of the Covenant of Good Faith and Fair Dealing

"The covenant of good faith and fair dealing is implied in every contract," *Uno Rests., Inc. v. Boston Kenmore Realty Corp.*, 441 Mass. 376, 385 (2004), citing *Kerrigan v. Boston*, 361 Mass. 24, 33 (1972), including contracts between sophisticated business people. See *Anthony's Pier Four, Inc. v. HBC Assocs.*, 411 Mass. 451, 473 (1991).

The implied covenant provides "that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract[,]" *Druker v. Roland Wm. Jutras Assocs., Inc.*, 370 Mass. 383, 385 (1976), quoting *Uproar Co. v. National Broad. Co.*, 81 F.2d 373, 377 (1st Cir. 1934), *cert. den.*, 298 U.S. 670 (1936), and "exists so that the objectives of the contract may be realized," *Ayash v. Dana-Farber Cancer Inst.*, 443 Mass. 367, 385, *cert. den., sub nom. Globe Newspaper Co. v. Ayash*, 546 U.S. 927 (2005). "A breach occurs when one party violates the reasonable expectations of the other." *Chokel v. Genzyme Corp.*, 449 Mass. 272, 276 (2007), and cases cited.

"In determining whether a party violated the implied covenant of good faith and fair dealing, . . . [the court] look[s] to the party's manner of performance . . . . There is no requirement that bad faith be shown; instead, the plaintiff has the burden of proving a lack of good faith . . . . The lack of good faith can be inferred from the totality of the circumstances." *T.W. Nicherson, Inc. v. Fleet Nat'l Bank*, 456 Mass. 562, 570 (2010) (internal citations omitted). However, the "scope of the covenant is only as broad as the contract that governs the particular relationship." *Ayash*, 443 Mass. at 385. It cannot "create rights and duties not otherwise provided for in the existing contractual relationship, as the purpose of the covenant is to

guarantee that the parties remain faithful to the intended and agreed expectations of the parties in their performance." *Uno Restaurants, Inc.*, 441 Mass. at 385.

To the extent Leading Edge's claim relies on Re/Max's termination of the Winchester and Lexington franchises or Re/Max declining to allow those locations to continue month-to-month so long as other franchises remained under contract, Leading Edge has not shown that Re/Max breached the implied covenant of good faith and fair dealing. Those actions were consistent with Re/Max's contractual rights, and the covenant of good faith and fair dealing cannot impose obligations that contradict the parties' contractual rights. *Uno Rests. Inc.*, 441 Mass. at 389; *Kroutik v. Ivloinentix. Inc.*, 2003 WL 1962486, at *6 (Mass. Super. Apr. 2, 2003) ("The court cannot, through the vehicle of the implied covenant, add obligations to a contractual undertaking that the parties did not impose on themselves.").[26]

Re/Max, however, did breach the implied covenant of good faith and fair dealing when it recruited Leading Edge sales agents to join competing franchises even though four FA's remained in effect. The essence of the franchise relationship is that Re/Max would support Leading Edge—through advertising, coaching, technological support and the like—to be a successful real estate brokerage, and Leading Edge would pay a variety of fees in return. All parties agree that hiring, supporting and retaining good sales agents is the lifeblood of a successful brokerage. When Re/Max set out to recruit sales agents away from Leading Edge—including those agents at locations that remained under franchise agreement—it violated the covenant of good faith and fair dealing. Leading Edge's right under the FA's was to have

[26] The covenant of good faith and fair dealing cannot impose upon Re/Max the obligation to renew expired franchise locations month-to-month or the obligation to grant a coterminous end date to multi-point franchises when the parties declined to do so in their FA's, in a side letter at the time they signed the FA's, or by later negotiation.

Re/Max *support* its brokerage business. Re/Max instead explicitly sought to undermine that business, and unquestionably deprived Leading Edge the fruit of its remaining contracts.[27]

Re/Max's actions in June 2018 in connection with recruiting Leading Edge sales agents while four LE locations remained under franchise agreement violated the covenant of good faith and fair dealing implied in the four unexpired FA's.[28]

3. Relief for Re/Max's Material Breach of Contract

Re/Max's breach of contract in late June 2018 excused Leading Edge's continued performance under the four FA's, which otherwise would have remained in effect through their expiration in 2019.

A material breach of contract by one party excuses the other party from having to perform as a matter of law. *Coviello v. Richardson,* 76 Mass. App. Ct. 603, 609 (2010), quoting *Hastings Assocs., Inc. v. Local 369 Bldg. Fund, Inc.*, 42 Mass. App. Ct. 162, 171 (1997). "[A] material breach of a contract occurs when the breach concerns an 'essential and inducing feature of the contract.'" *G4S Tech. LLC v. Massachusetts Tech. Park Corp.*, 479 Mass. 721, 733-734 (2018), quoting *EventMonitor, Inc. v. Leness*, 473 Mass. 540, 546 (2016). "Essential and inducing features of a contract are provisions that are 'so serious and so intimately connected with the substance of the contract[]' that a failure to uphold the provision would justify the other party walking away from the contract and no longer being bound by it." *Id.*, citing *Buchholz v.*

[27] Applying the implied covenant of good faith and fair dealing to Re/Max's recruiting conduct does not contradict any of the parties' express rights under the FA's, for the reasons discussed in Section B.1 *supra.*

[28] This conclusion remains even if Re/Max were correct that Policy Directive No. 1 does not apply to Re/Max explicitly. Even if the policy directive did not apply explicitly, it is relevant to the parties' expectations and performance under their FA's, and therefore relevant to applying the covenant of good faith and fair dealing. Applying the Policy Directive to Re/Max also does not contradict any provision of the FA's, so it does not qualify as altering the parties' bargained-for rights.

Green Bros. Co., 272 Mass. 49, 52 (1930). See *Aerostatic Engr. Corp. v. Szczawinski*, 1 Mass. App. Ct. 141, 145 (1973) (material breach must go "to the root of the contract").[29]

Here, Re/Max's breach of contract easily qualifies as a material breach. As discussed above (Section B.2, *supra* at p. 53), the essence of Re/Max's agreement was to *support* Leading Edge's success as a franchised broker. Re/Max instead chose to undermine Leading Edge's successful brokerage, striving to cause Leading Edge to fail even though more than a year remained on some of Leading Edge's franchise agreements.[30] Leading Edge accurately characterized Re/Max's conduct when it said on July 3rd that Re/Max had made it "impossible" to continue operations as a franchisee because Re/Max would drive LE "out of business." Ex. 45 (July 3, 2018 "constructive termination" letter). Therefore, Re/Max's material breach excused Leading Edge from continued performance of its obligations under the FA's that otherwise remained in effect through part or all of 2019.[31]

4. Leading Edge's Damages for Breach of Contract

The breach of contract proven by Leading Edge concerns Re/Max's improper recruiting of Leading Edge sales agents to competing franchisees while LE remained under contract as a

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[29] The determination of materiality may involve consideration of the factors set forth in the Restatement, including: (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected; (b) the extent to which the injured party can be adequately compensated for the benefit of which he was deprived; (c) the extent to which the breaching party will suffer forfeiture; (d) the likelihood that the breaching party will cure his failure; and (e) the extent to which the breaching party's failure to perform comports with standards of good faith and fair dealing. See *DiBella v. Fiumara*, 63 Mass. App. Ct. 640, 646-647 n.7, review denied, 444 Mass. 1107 (2005) (referencing factors from Restatement § 241).

[30] Most if not all of the factors in § 241 of the Restatement favor Leading Edge. Leading Edge was deprived of Re/Max's support of its franchise, and instead, Re/Max actively undercut LE's business. Eventual contract damages would mean little to LE if its business was ruined. Re/Max breached the covenant of good faith and fair dealing. Re/Max's actions also show that it would not be curing its breach. Project Aloha called for undermining Leading Edge's franchise if it declined renewal; Re/Max was implementing that plan.

[31] In its July 3, 2018 letter, Leading Edge explained that Re/Max had "constructively terminated" the four unexpired FA's, and that Leading Edge would no longer conform to its obligations under those FA's. To the extent Leading Edge framed its breach of contract claim as one for constructive termination, that claim is one for the relief arising out of a material breach of contract discussed in this Section.

Re/Max franchisee. The relevant damages, therefore, are mainly those suffered by Leading Edge as a result of Re/Max's impermissible solicitation of LE sales agents.[32]

The trial evidence on this theory of damages was slim: Prior to the rapid deterioration of the Re/Max-Leading Edge relationship in June 2018, Leading Edge had approximately 200 sales agents. By the time of trial, Leading Edge had approximately 160 sales agents. Leading Edge suggests this decrease can be attributed to Re/Max's solicitation of agents to competing broker/owners and Re/Max's suggestion to the market that Leading Edge would be selling its brokerage. The evidence does not support this contention. Even if it did, Leading Edge did not produce evidence of the damages caused by a decrease in sales agents.

Unlike franchise broker/owners, sales agents are "free agents," independent contractors who can change brokerages with relative ease. The evidence concerning Re/Max's two recruiting sessions was that they were disappointing to Re/Max. Relatively few LE sales agents attended, and there was no specific evidence that any particular LE agent joined a competing franchisee, let alone as a result of Re/Max's breach of contract. There was also no evidence concerning the timing of the departure of LE agents to support an inference that departures were caused by Re/Max's actions.[33] With 200 sales agents at play and a variety of reasons that any one agent might leave Leading Edge, it does not suffice to point to the decrease of up to forty

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[32] Theoretically at least, because Re/Max breached the four FA's still in force, Leading Edge might claim entitlement to the support Re/Max was obligated to provide to the LE franchises, for example, ongoing promotional support. Where Leading Edge determined Re/Max had constructively terminated the FA's and immediately began operations as an independent brokerage and made clear it would no longer be affiliated with Re/Max in any way, this potential aspect of contract damages does not apply. Further, Leading Edge presented no evidence on this version of damages.

[33] Likewise, there was no evidence whether departing sales agents worked at LE's expired locations, which were closed by LE, at least for a period in June. Agents who worked at a closed LE office could reasonably have chosen to join a competing brokerage in the same town (where their expertise and contacts are best) or may have desired, on their own, to stay within Re/Max. Those types of departures might not be attributable to Re/Max's conduct.

sales agents over more than a year. Leading Edge therefore did not prove that a decrease in its sales force was attributable to Re/Max's breach of contract.

Further, even accepting a loss of some number of agents, there is no evidence that identifies monetary damages attributable to lost agents. The revenue generated by sales agents varies widely: the most successful LE agents generate $1 million in commissions annually and some agents generate zero commissions. See Ex. 25 (schedules of LE agents attached to invitation to competing brokers). It is impermissibly speculative to attach damages to a decrease in sales agents in the absence of any evidence of who they were, why they left, or how much revenue they generated. As to the alleged decrease in sales agents, Leading Edge has not sustained its burden of proof with respect to the amount of damages caused by Re/Max's breach of contract.[34]

Leading Edge also contends that, because Re/Max materially breached the unexpired FA's, Leading Edge justifiably cut ties with Re/Max and incurred expenses as a result. This claim requires a different analysis. Leading Edge identified $112,826 of expenses, which it contends it incurred because it was required, on an expedited basis, to de-identify its locations as Re/Max franchises and re-brand as Leading Edge. These expenses relate to purchasing and installing new yard signs ($57,544 and $10,450, respectively), purchasing new business cards ($25,482) and banners ($4500), changing the LE website ($5350), and replacing other marketing material ($9,500). Mydelski testified that Leading Edge expedited all these tasks between June 28 and July 3, 2018, and paid a premium because of the tight time frame.

I credit that Leading Edge incurred these expenses once Re/Max materially breached the unexpired FA's and that it did so in order to keep its business in operation, which required it to

[34] This discussion applies equally to breach of contract by violating Policy Directive No. 1 and breach of the covenant of good faith and fair dealing.

de-identify from Re/Max. Leading Edge, however, also must show that it incurred these expenses because of Re/Max's breach of contract.

Leading Edge had made crystal clear that it would not renew its expired FA's and, indeed, did not intend to renew its in-force FA's when they expired during 2019. Once Re/Max (permissibly) withdrew its permission for Winchester, Lexington, Belmont and Cambridge to operate without FA's, Leading Edge closed those locations reluctantly but consistent with its contractual obligations. In the absence of Re/Max's material breach in late June, Leading Edge would have continued with its in-contract locations. It eventually may have incurred the costs of de-identifying and rebranding as non-franchised Leading Edge but many months down the road (and subject to the disputed post-term non-compete). Therefore, because Leading Edge's decisions through June 2018 show that it would have eventually incurred the costs of de-identifying and rebranding, its actual damages are those incurred because Leading Edge undertook those tasks on an expedited basis between June 28 and July 3, 2018.

The evidence on that point was limited. As a threshold matter, de-identifying and rebranding was essential once Leading Edge decided to maintain its operations. Notwithstanding Re/Max's breach, there can be no question that Re/Max would have enforced its trademark rights in court had Leading Edge allowed lingering use of the Re/Max brand (intentional or not).[35]

Mydelski testified that the signs, cards and other marketing materials were more expensive because they were needed on a rush basis. There was no trial evidence as to *how much* more expensive, or whether the premium for "rush" jobs applied to some or all of the expenses. Mydelski did testify that some of the marketing materials were required on a "24 hour" turnaround, which was a very unusual time crunch for such marketing materials. From

[35] This was demonstrated by Re/Max's motion for preliminary injunction on August 8, 2018, which was denied.

this limited evidence, I infer that Leading Edge in fact paid a premium because, with good reason, it sought to de-identify and rebrand on a very expedited basis. Given the lack of specific evidence concerning a premium, I conservatively estimate that Leading Edge paid a premium of 25% across all these expenses because it needed these services on an expedited basis. Accordingly, Leading Edge suffered damages of $22,565 due to Re/Max's material breach of the unexpired FA's, which caused Leading Edge to incur de-identifying and rebranding expenses on an expedited basis.[36]

C. Tortious Interference with Contract

Leading Edge claims that Re/Max's solicitation of LE sales agents in late June 2018 tortiously interfered with Leading Edge's contracts with its sales agents. To succeed on this claim, Leading Edge must prove that: (1) Leading Edge had contracts with a third party, *i.e.*, its sales agents; (2) Re/Max knowingly induced Leading Edge agents to break their contracts with Leading Edge; (3) Re/Max's alleged interference, in addition to being intentional, was improper in motive or means; and (4) Leading Edge was harmed by Re/Max's actions. See *Psy-Ed Corp. v. Klein*, 459 Mass. 697, 715-16 (2011), citing *G.S. Enters. Inc. v. Falmouth Marine, Inc.*, 410 Mass. 262, 271 (1991).

Leading Edge satisfies the first element due to its contractual relationship with its sales agents. It also has shown that Re/Max's actions were both intentional and improper, because by recruiting LE sales agents, Re/Max sought to deprive LE of the continuing benefits it was entitled to under its four in-force FA's and, more generally, to hurt LE's business even though it remained a franchisee.

[36] For the total expenses to reflect a 25% premium: $90,261 x 1.25 = $112,826, the difference being $22,565.

However, for many of the same reasons discussed above (Section B.4, *supra*), the trial evidence did not establish that Re/Max successfully induced LE agents to break their contracts with LE, nor did it show damages to LE. There was no evidence that Re/Max swayed any particular sales agent to break their contract with LE. I decline to infer from the general evidence that Leading Edge lost agents in the second half of 2018 and that Re/Max was successful in its recruiting efforts. See discussion at Section B.4, *supra.* And, for the same reasons discussed at Section B.4 above, the evidence does not establish that LE suffered damages attributable to Re/Max's recruiting of sales agents.

D. Leading Edge's Claim for Unfair, Deceptive or Anticompetitive Conduct in Violation of G. L. c. 93A, §§ 2 and 11.

G. L. c. 93A, § 2 makes unlawful "unfair methods of competition" and "unfair or deceptive" acts or practices in trade or commerce.[37]

Chapter 93A creates new "substantive rights," *Slaney v. Westwood Auto, Inc.*, 366 Mass. 688, 693 (1975), and is not restricted to existing claims such as breach of contract or common law torts. See *Exxon Mobil Corp. v. Attorney Gen.*, 479 Mass. 312, 316 (2018) ("Our analysis of what constitutes an unfair or deceptive act or practice requires case-by-case analysis . . . and is neither dependent on traditional concepts nor limited by preexisting rights or remedies."). A commercial act or practice is unfair in violation of c. 93A "if it falls within at least the penumbra of some common-law, statutory, or other established concept of unfairness;" is "immoral, unethical, oppressive, or unscrupulous;" and causes substantial injury to consumers. See *PMP Associates, Inc. v. Globe Newspaper Co.*, 366 Mass. 593, 596 (1975). The scope of c. 93A

[37] Because Leading Edge has not specifically advanced the argument that Re/Max engaged in unfair methods of competition, this discussion focuses on "unfair" or deceptive acts or practices. Given Re/Max's motivation to avoid future competition from its past franchisees, its overall course of conduct may well qualify as an unfair method of competition. That conclusion, however, would not alter the relief due Leading Edge under G. L. c. 93A, §§ 2 and 11.

liability turns on all the facts and circumstances of the case. *Commonwealth v. DeCotis,* 366 Mass. 234, 242 (1974). If a person "'invades a [plaintiff's] legally protected interests, if that invasion causes [plaintiff] a loss [of money or property] . . . the [plaintiff] is entitled to redress under [c. 93A].'" *Auto Flat Car Crushers, Inc. v. Hanover Ins. Co.*, 469 Mass. 813, 820 (2014), quoting *Hershenow* v. *Enterprise Rent-A-Car Co. of Boston*, 445 Mass. 790, 802 (2006) (actual injury essential for recovery under c. 93A). A successful claimant under c. 93A is entitled to recover as actual damages "all losses which were the foreseeable consequences of the defendants' unfair or deceptive act or practice." *DiMarzo v. American Mut. Ins. Co.*, 389 Mass. 85, 101 (1983).

Where, as here, a c. 93A claim is between two commercial parties, each represented by sophisticated businesspersons, the standard for unfair or deceptive conduct is heightened. See, e.g., *Levings v. Forbes & Wallace,, Inc.*, 8 Mass. App. Ct. 498, 504 (1979) ("In cases between businesses, . . . [t]he objectionable conduct must attain a level of rascality that would raise an eyebrow of someone inured to the rough and tumble of the world of commerce."); *Massachusetts Employers Ins. Exchange v. Propac-Mass., Inc.*, 420 Mass. 39, 42-43 (1995).

Here, Leading Edge contends that two aspects of Re/Max's conduct toward Leading Edge violated c. 93A, §§ 2 and 11. First, Leading Edge argues that Leading Edge misrepresented and failed to disclose material facts in its FDD's in connection with LE's renewal of its franchise agreements. Second, Leading Edge contends that Re/Max's contract practices—combining staggered terms and non-compete clauses—as well as Re/Max's overall implementation and enforcement of its contracts vis-à-vis Leading Edge, violated c. 93A. Each claim is considered below.

1. Alleged Misrepresentations and Failure to Disclose Material Facts in FDD's Connected to Leading Edge Renewal of Certain Franchise Agreements.

This aspect of Leading Edge's claim under c. 93A is based on the same facts underlying its claim for fraudulent inducement discussed above (Section A, *supra*). Leading Edge alleges that Re/Max engaged in unfair or deceptive acts or practices because it misrepresented or failed to disclose material information in the FDD's which accompanied Leading Edge's franchise renewals. Leading Edge again relies upon: (a) the text of Item 17(a) in the FDD that "to facilitate mergers or conversions or other large transactions, as well as to accommodate existing franchisees that acquire additional offices, Re/Max Regional *may* provide for a longer franchise term" (emphasis supplied); and (b) the financial statements included in the FDD, which failed to consolidate the operations of Re/Max's subsidiary, Re/Max Promotions, thereby failing to conform to GAAP and the FTC Franchise Rule, 16 C.F.R. § 436.

At the outset, both misrepresentations and failure to disclose material information are squarely within c. 93A's prohibition of unfair or deceptive conduct. See *Commonwealth v. AmCan Enters., Inc.*, 47 Mass. App. Ct. 330, 334 (1999) (act or practice is deceptive if a representation or omission is misleading on a material matter); 940 C.M.R. 3.05(1), 3.16(2) (Attorney General regulations prohibiting misrepresentations and failure to disclose material information). I also agree with Leading Edge that violation of the FTC Franchise Rule can serve as the basis for a violation of c. 93A, regardless whether a private right of action exists under the Rule, because the FTC Franchise Rule is a law or regulation intended to protect consumers. See *Klairmont v. Gainsboro Rest., Inc.*, 465 Mass. 165, 174 (2013); 940 C.M.R. 3.16(4).

However, Leading Edge's c. 93A claim based on these FDD disclosures suffers causation infirmities similar to those discussed in connection with fraudulent inducement. To establish liability under Sections 2 and 11, Leading Edge must establish: (1) that Re/Max engaged in an

unfair method of competition or committed an unfair or deceptive act or practice; (2) a "loss of money or property suffered as a result;" and (3) a causal connection between the loss suffered and Re/Max's unfair or deceptive conduct. *Auto Flat Car Crushers*, 469 Mass. at 820. Although I have found Leading Edge suffered some damages as a result of Re/Max's breach of contract, see Section B.4 *supra*, Leading Edge has not shown the requisite harm connected to Re/Max's FDD disclosures. That is, in large part, because there was no credible evidence that the challenged disclosures—Item 17(a) and the non-consolidated financial statements—caused Leading Edge to sign the FA's. Instead, because Item 17(a) reserved to Re/Max discretion whether to extend FA duration, it cannot serve as a basis for LE to claim it was misled, especially given the business sophistication on both sides of the contract. And, there was no credible evidence that had Re/Max properly disclosed its financial information by consolidating the operations of Re/Max Promotions, Leading Edge would not have signed the FA's.

Leading Edge may have shown that the financial statements in the FDD's were unfair because they did not conform to the FTC Franchise Rule, but it did not show the harm and causation required to establish this version of its c. 93A claim.

2. Re/Max's Contracting Practices and Overall Course of Dealing with Leading Edge.

Leading Edge's stronger claim is that Re/Max's overall course of dealing, starting with the contract terms it required in its franchise agreements and ending with Re/Max's actions once Leading Edge decided to not renew its FA's when they expired, constitutes unfair conduct.

As detailed above, Re/Max breached the terms of its unexpired FA's with Leading Edge by violating the predatory recruiting directive, and also breached the implied covenant of good faith and fair dealing in the unexpired FA's. Those breaches of contract can support c. 93A liability, but by themselves do not mandate liability. See *Anthony's Pier Four, Inc. v. HBC*

Assocs., 411 Mass. 451, 471 (1991) (breach of implied covenant of good faith and fair dealing and violation of c. 93A relied on same business conduct); *Diamond Crystal Brands, Inc. v. Backleaf, LLC*, 60 Mass. App. Ct. 502, 507 (2004) ("a knowing violation of contractual obligations for the purpose of securing unwarranted benefits" constitutes c. 93A violation).

Here, I conclude that Re/Max's contract-breaching conduct in late June 2018 serves as the linchpin to Re/Max's liability under c. 93A. Even if the breach of contract on its own did not qualify as unfair, it was the culmination of Re/Max's approach to its contracts with Leading Edge, all of which is pertinent to the c. 93A analysis. For the reasons discussed below, Re/Max's overall course of conduct with Leading Edge, culminating in its recruitment efforts in late June 2018, constitute unfair commercial conduct. See, e.g., *Anthony's Pier Four*, 411 Mass. at 474 ("[C]onduct in disregard of known contractual arrangements and intended to secure benefits for the breaching party constitutes an unfair act or practice for c. 93A purposes").

To be clear, most or perhaps all of Re/Max's actions prior to late June 2018 did not breach any contract and were not unfair or deceptive. Re/Max was *not* obligated to provide Leading Edge a unified expiration date for its multiple franchise locations, as the parties understood and agreed to the complexities of staggered terms when they signed the FA's. Re/Max was *not* obligated to allow expired franchise locations to holdover month-to-month for the same reason and because the FA's reserved to Re/Max discretion on that issue. More generally, Re/Max was not required to accede to Leading Edge's demands concerning staggered terms or non-compete provisions. Both sides negotiated hard and exercised the leverage they thought they had. But the dynamic changed from hard bargaining to unfair conduct after Leading Edge chose not to renew but still conform to its unexpired FA's (by closing offices as required). Once that happened, Re/Max's real view of its contract rights became clear. If a

franchisee had the temerity to not renew, Re/Max would not permit a gradual disengagement from Re/Max, even if that was the natural result of staggered expirations.[38] Instead, Re/Max chose to punish the franchisee by effectively terminating the franchise prematurely and, as best it could, undermining the franchisee's business.

Re/Max's conduct reflects a glaringly one-sided view of its franchise agreements, loyalty between franchisor and franchisee, loyalty to contract terms, and who bears the risks of contractual uncertainty. Re/Max would have the uncertainty and risks inherent in staggered terms for multi-point franchises, flow in only one direction. The risks for the franchisee are indeed plain: the confluence of staggered terms and non-competes mean that, absent some negotiated resolution (or court intervention), a multi-point franchisee may be forced to close expired locations while continuing in-term operations, undercutting the benefits of multiple locations that the franchisee built up with Re/Max's encouragement. But the risks and uncertainty inherent in the contracts, of course, flow in both directions. The franchisor must accept that, sometimes, a multi-point franchise may choose not to renew. Absent some negotiated resolution, staggered terms can lead to what happened here: a franchisee gradually disengages from Re/Max; expired locations close while other locations remain under contract. Nevertheless, Re/Max is obligated to honor its ongoing contracts even though it *hates* the idea of supporting a brokerage that has made clear it will eventually leave Re/Max. The alternative to honoring those contracts, however, is to suggest that multi-point franchisees must be *perpetual* franchisees, a position Re/Max knows it cannot sustain.

This two-way uncertainty and risk is what manifested in the spring of 2018. Once Leading Edge was denied a preliminary injunction, it was navigating the natural result of

[38] To use CEO Alexander's words, Re/Max would not allow a franchisee to "run out the clock."

staggered expirations—closing expired offices but continuing operations at its other locations. Through June 26, Leading Edge was, unhappily, honoring its contracts, which Re/Max repeatedly has urged is paramount. That situation, though dissatisfying to both parties, was what Re/Max had bargained for—four LE franchise locations in-term but two expired with additional expirations forthcoming through 2019. Re/Max did not stand on its bargain. It instead began recruiting LE agents, *including* those at in-term franchise locations with the undeniable goal of undermining LE's entire brokerage, *including* the in-term franchises. It is worth identifying exactly how Re/Max interprets its FA obligations and the covenant of good faith and fair dealing: Re/Max suggests it can insist on staggered terms, and, if no FA is renewed and no holdover status granted, then the expired locations must close. And, if a multipoint franchisee still declines perpetual staggered renewals (or declines to sell its business to a new Re/Max operator), Re/Max is entitled to destroy the viability of the remaining franchises, even while they remain under contract.

That one-sided interpretation of Re/Max's contract rights is contrary to the FA's, which include the Policy Directive, and violated the implied covenant of good faith and fair dealing. Accounting for Re/Max's entire course of conduct vis-à-vis Leading Edge, Re/Max engaged in unfair commercial conduct in violation of c. 93A, § 2. Re/Max encouraged franchisees to expand to include multiple locations, but insisted upon staggered terms for multi-point franchises together with in-term and post-term non-compete provisions. Even though that *may* have been permissible as a general matter, Re/Max's eventual actions when faced with LE's non-renewal were not. After insisting that LE comply with the FA's, Re/Max then breached its own obligations, blatantly and in order to restrain ordinary competition from LE. Even between

sophisticated parties, both with business leverage, Re/Max's actions crossed the line to unfair acts or practices in violation of c. 93A.

The damages suffered by Leading Edge as a result of Re/Max's unfair acts or practices are the same as identified with respect to Re/Max's breach of contract: $22,565. See Section B.4, *supra*. General Laws c. 93A, § 11 authorizes me to double or treble LE's damages if Re/Max's violation of c. 93A was "willful or knowing." Here, Re/Max believed, wrongly, that its "predatory recruiting" of LE agents was contractually permissible and also believed that its overall approach to the LE renewals was a permissible exercise of its contractual rights. Although I have determined after trial that Re/Max's overall course of conduct vis-à-vis Leading Edge was unfair, Leading Edge has not proven that Re/Max's violation was willful or knowing. Leading Edge therefore recovers only single damages. However, Leading Edge also is entitled to recover its attorney's fees attributable to its c. 93A claims pursuant to Section 11, in conformance with the order below.

E. Re/Max's Claims

Re/Max contends it is entitled to recover a variety of fees and penalties pursuant to the four FA's that remained in effect through 2019, as well as millions of dollars in lost profits, because Leading Edge failed to comply with the FA's after July 3, 2018.

I concluded above that Re/Max breached its contractual obligations to Leading Edge (Section B.1-2) and that its breach was material and excused Leading Edge from continued performance under the unexpired FA's (Section B.3). In light of these conclusions, Re/Max is not entitled to any recovery under the unexpired FA's.

The discussion to this point likewise demonstrates that Re/Max did not prove that Leading Edge engaged in unfair or deceptive acts or practices. The parties' contracts made it

exceedingly difficult for Leading Edge to disengage from Re/Max, but through June 2018 Leading Edge sought to do so *and* conform to its contracts. It was Re/Max, not Leading Edge, who strayed from its contractual obligations. And it was Re/Max, not Leading Edge, that engaged in unfair commercial conduct in violation of G. L. c. 93A.

F. Declaratory Judgment Concerning the Franchise Agreement's Non-Compete Provisions

Leading Edge also seeks a declaration that the non-compete provisions in Re/Max's franchise agreements, including both the in-term and post-term non-competes, are unenforceable. Leading Edge first attacks the provisions broadly. It argues that Re/Max's only basis for a non-compete is to protect confidential information, but that Re/Max never disclosed confidential information to Leading Edge during their long relationship, and therefore Re/Max cannot enforce *any* non-compete provision. Secondarily, Leading Edge argues that: (i) the in-term non-compete must be limited in scope to the community served by each franchise; and (ii) the post-term non-compete is invalid because it impermissibly seeks to limit only ordinary competition.

The enforceability of these non-compete provisions, especially in the context of a multipoint franchisee with staggered expiration dates, is an interesting issue.[39] However, that

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[39] After hearing the evidence, I am skeptical of Leading Edge's claim that Re/Max, during the parties' long relationship, never shared confidential information. Leading Edge proposes too high a hurdle for the meaning of confidential information. Re/Max, among other things, provided LE and its other franchisees access to the Main Street Portal, to the Re/Max "launch pad," and to market research and analysis for use of franchisees and their agents. Re/Max offered "Re/Max University" training and education to franchise sales agents. It is not enough for LE to argue retrospectively that such information or technology platforms were not especially useful or insightful, or were drawn from public sources or market sources otherwise available to LE. The way information is packaged and organized itself can be proprietary.

On the other hand, Re/Max executives struggled mightily to identify a business justification for the post-term non-compete that would make the provision something other than a restraint on ordinary competition. Re/Max executives vaguely discussed avoiding disruption, protecting the franchise system, guarding against "holes" in their franchise network if a franchisee leaves after expiration, and how "it just doesn't feel right" to have a former franchisee compete against Re/Max. Those explanations all point to limiting only ordinary competition and reflect Re/Max's expectation of something very close to perpetual franchises (at least so long as a broker remains in the industry).

issue does not require a decision in this case. In light of my rulings on the other claims and based on the specific trial evidence in this case, Leading Edge is not bound by either form of non-compete due to Re/Max's material breach of contract from June 28, 2018 forward. In those circumstances, I must consider whether a declaration with respect to enforceability of the non-compete provisions is warranted.

"[A] plaintiff seeking declaratory relief must demonstrate . . . the existence of an actual controversy[.]" *Entergy Nuclear Generation Co. v. Department of Envtl. Protection*, 459 Mass. 319, 326 (2011). See also *Doe v. Secretary of Educ.*, 479 Mass. 375, 384-385 (2018). "An 'actual controversy' is 'a real dispute caused by the assertion by one party of a legal relation, status or right in which he has a definite interest in the subject matter, where the circumstances attending the dispute plainly indicate that unless the matter is adjusted such antagonistic claims will almost immediately and inevitably lead to litigation.'" *Chute v. Retals, LLC*, 91 Mass. App. Ct. 1127, 2017 WL 2544745, at *5 (2017) (Unpublished Rule 1:28), quoting *Bunker Hill Distrib., Inc. v. District Attorney for Suffolk Cnty.*, 376 Mass. 142, 144 (1978). "The controversy must be present and concrete, not speculative." *Id.*, citing *Bunker Hill Distrib., Inc.*, 376 Mass. at 145. "Parties are not entitled to decisions upon abstract propositions of law unrelated to some live controversy[.]" *Bunker Hill Distrib., Inc.*, 376 Mass. at 145.

Moreover, "under the plain language of the declaratory judgment statute, '[t]he court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceedings or for other sufficient reasons.'" *Wells Fargo Fin. Massachusetts, Inc. v. Mulvey*, 93 Mass. App. Ct. 768, 772 n.8 (2018), citing G. L. c. 231A, § 3. "[E]ven where [the] court

In any event, for the reasons discussed in this section, these issues will not be decided.

ha[s] jurisdiction to award declaratory relief, 'it does not follow that the petitioners . . . [are] entitled to a decree as a matter of right[.]'" *Id.*, quoting *National Shawmut Bank of Boston v. Morey*, 320 Mass. 492, 497 (1946).

Because the non-compete provisions now do *not* apply between these parties, it is unnecessary and unwise to rule on their enforceability. Enforcement of the non-compete was a live issue when Leading Edge filed this lawsuit, but the parties' actions in June and July 2018 changed the landscape. Having now determined that Re/Max may not enforce the non-compete clauses against Leading Edge as a result of Re/Max's material breach, the question whether the non-competes are enforceable is abstract. With 230 franchisees in New England, Re/Max argues that a ruling against it on either form of non-compete could be used by other franchisees, when the facts of other franchisor/franchisee relationships may be very different from this case. It is true that any decision on enforceability would be based on the specific evidence between these parties, but also likely that a decision would be relied on by non-parties—whether franchisor or franchisee, depending on the outcome. Because it is not necessary to reach the issue to fully adjudicate the rights between *these parties*, I exercise my discretion to decline to reach Leading Edge's claim for declaratory judgment.

CONCLUSION AND ORDER

For the reasons set forth in these findings of fact and conclusions of law after trial:

1) Judgment shall enter in favor of Leading Edge and against Re/Max with respect to Leading Edge's claims for breach of contract (Count I of the Amended Complaint), breach of the implied covenant of good faith and fair dealing (Count II), and violation of G. L. c. 93A, §§ 2 and 11 (Count IV). On these claims, Leading Edge is entitled to damages in the total amount of $22,565, which reflects actual damages on each of those counts, with no multiplier pursuant to G. L. c. 93A, § 11.

2) Judgment shall enter in favor of Re/Max and against Leading Edge with respect to Leading Edge's claims for fraudulent inducement (Count V and VI) and intentional interference with contractual relations (Count III);

EXHIBIT C

3) Because I decline to reach Leading Edge's claim for declaratory judgment (Count VII), that claim is dismissed.

4) Judgment shall enter in favor of Leading Edge and against Re/Max with respect to Counts I through IV of Re/Max's Counterclaim.

5) Because Leading Edge is entitled to attorney's fees under G. L. c. 93A, § 11, Leading Edge shall utilize Superior Court Rule 9A to submit a petition for attorney's fees attributable to its c. 93A claims, after which I will schedule a hearing on the petition.

So ordered.

Christopher K. Barry-Smith
Justice of the Superior Court

DATE: April 16, 2020