

## CONFIDENTIALITY AND NON-SOLICITATION AGREEMENT<sup>1</sup>

This Confidentiality and Non-Solicitation Agreement (the “Agreement”) is made and entered into on \_\_\_\_\_, between \_\_\_\_\_ (“Representative”), and \_\_\_\_\_ (“Recipient”). KELLER WILLIAMS REALTY, LLC (“Company”) shall be a third-party beneficiary of this Agreement with full right and authority to enforce its terms against Representative and Recipient.

### RECITALS

WHEREAS, Company has developed, is using and is the owner of all rights in a unique system (“the System”) for the development and operation of real estate brokerage market centers and Representative support programs under the name and mark KELLER WILLIAMS® REALTY (“Market Centers” and “Regions,” respectively); and

WHEREAS, the System includes but is not limited to the proprietary names, marks, designs and colors used in connection with the Region Market Centers and procedures and compilations of confidential information described in Paragraph 1 of this Agreement regarding, among other things, the inventory and financial control techniques, uniform standards and specifications, quality and uniformity of products and services, operating methods and training used by Company in the operation of the System (“Company’s Trade Secrets”); and

WHEREAS, Company’s Trade Secrets provide economic advantages to Company and are not generally known to, and are not readily ascertainable by proper means by Company’s competitors who could obtain economic value from knowledge and use of Company’s Trade Secrets; and

WHEREAS, Company has taken, and intends to take all reasonable steps to maintain the confidentiality and secrecy of Company’s Trade Secrets; and

WHEREAS, Company has granted Representative a limited right to use certain Company’s Trade Secrets for the period defined in the Representative agreement made and entered into \_\_\_\_\_ (“Representative Agreement”) between Company and Representative; and

WHEREAS, Company and Representative have agreed in the Representative Agreement on the importance to Company and to Representative and other franchised users of the System of restricting use, access and dissemination of Company’s Trade Secrets; and

WHEREAS, it will be necessary for certain employees, associates, independent contractors, officers, directors and interest holders of Representative, or any entity having an interest in Representative to have access to and to use some or all of Company’s Trade Secrets in the development, management and operation of Regions and Market Centers using the System; and

WHEREAS, Representative has agreed to obtain from people who have access to Company’s Trade Secrets written agreements protecting Company’s Trade Secrets and the System against unfair competition; and

WHEREAS, Recipient wishes to remain, or wishes to become, employed by or associated with Representative; and

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<sup>1</sup> *All covenants contained herein are subject to applicable law.*

WHEREAS, Recipient wishes and needs to receive and use Company's Trade Secrets in the course of his employment or association in order to effectively perform his services for Representative; and

WHEREAS, Recipient acknowledges that receipt of the right to use the Trade Secrets constitutes independent valuable consideration for the representations, promises and covenants of Recipient herein; and

WHEREAS, Recipient acknowledges that receipt of the right to use the Trade Secrets constitutes independent valuable consideration for the representations, promises and covenants of Recipient herein;

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

1. Company and/or Representative shall disclose to Recipient some or all of Company's Trade Secrets relating to the System. All information and materials, including, without limitation, the Representative Operational Manual and Market Center Management and Operational Regional Brand Standards Manuals (the "Regional Brand Standards Manuals") described in the Representative Agreement and any information, drawings, knowledge, know-how, specifications, techniques and compilations of data (including, but not limited to, information concerning the finances, operating results and expiration dates of franchise agreements between Company and Market Center Franchisees) which is communicated to Recipient by Representative or Company shall be deemed Company's Trade Secrets for the purposes of this Agreement.

2. Recipient shall receive Company's Trade Secrets in confidence and shall, at all times, maintain them in confidence, and use them only in the course of his employment by, or association with, Representative and then only in connection with the development or operation by Representative of Market Centers using the System for so long as Representative is authorized by Company to use the System.

3. Recipient shall not, at any time, make copies of any documents or compilations containing some or all of Company's Trade Secrets without Company's express written permission.

4. Recipient shall not, at any time, disclose or permit the disclosure of Company's Trade Secrets except to other employees of, or persons associated with, Representative and only to the limited extent necessary to train or assist other employees or associates of Representative in the operation or development of Market Centers.

5. Recipient shall surrender the Regional Brand Standards Manuals and any other material containing some or all of Company's Trade Secrets to Representative or to Company, upon request, or upon termination of employment by, or association with, Representative, or upon conclusion of the use for which the Regional Brand Standards Manuals or other information or material may have been furnished to Recipient.

6. Recipient shall not, directly or indirectly, do any act or omit to do any act, which would or would be likely to be injurious or prejudicial to the goodwill of the System.

7. In order to protect the goodwill and unique qualities of the System and the confidentiality and value of Company's Trade Secrets, and in consideration for the disclosure to Recipient of Company's Trade Secrets, Recipient further agrees and covenants that, during the time Recipient is employed by Representative, Recipient will not:

a. Divert or attempt to divert, directly or indirectly, any business, business opportunity or customer of any Region or Market Center using the System to any competitor.

b. Except as permitted under the Representative Agreement, employ or engage or seek to employ or engage any individual who is at the time employed or engaged by Company or any Franchisee or Representative of Company, or otherwise directly or indirectly induce any such individual to leave his or her employment or engagement. This subsection shall not apply to any employee or agent transfer between Representative and Company.

c. Directly or indirectly, for himself or through, on behalf of or in conjunction with any person, partnership or corporation, without the prior written consent of Company, own, maintain, operate, engage in, or have any interest in any real estate business which competes directly with Company, including any real estate business that involves (i) the real estate brokerage business; or (ii) the offer, sale or operational support of businesses in the real estate brokerage business (whether as a franchisor, licensor, regional representative, area director or other similar service provider capacity).

8<sup>2</sup>. In further consideration for the disclosure to Recipient of Company's Trade Secrets and to protect the uniqueness of the System, Recipient agrees and covenants for two (2) years following the earlier of the expiration, cancellation, termination or transfer of all of Representative's interest in the Representative Agreement or the termination of his employment by, or association with, Representative, the Recipient will not without, without the prior written consent of Company:

a. Divert or attempt to divert, directly or indirectly, any business, business opportunity or customer of any Region or Market Center using the System to any competitor.

b. Employ or engage or seek to employ or engage any individual who is at the time employed or engaged by Company or any Franchisee or Representative of Company, or otherwise directly or indirectly induce any such individual to leave his or her employment or engagement.

In all cases, for purposes of calculating the duration of the 2-year period, any time during which Recipient is in violation or breach of the covenant will be excluded such that a full 2-year period of compliance is required of Recipient.

9. Representative undertakes to use its best efforts to ensure that Recipient acts as required by this Agreement.

10. Injunctive Relief. Recipient agrees that in the event of a breach of this Agreement, Company and Representative would be irreparably injured and be without an adequate remedy at law. Therefore, in the event of such a breach, or threatened or attempted breach of any of the provisions hereof, both Company and Representative shall be entitled to enforce the provisions of this Agreement and shall be entitled, in addition to any other remedies that are made available to it at law or in equity, including the right to terminate the Representative Agreement, to a temporary and/or permanent injunction and a decree for the specific performance of the terms of this Agreement, without the necessity of showing actual or threatened harm, and without being required to furnish a bond or other security.

11. Recipient agrees to pay all expenses (including court costs and reasonable attorney fees) incurred by Company and Representative in enforcing this Agreement.

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<sup>2</sup> Section 8 will be deleted and marked "INTENTIONALLY OMITTED" if the Region and Recipient are located in California.

12. Any failure by Company or Representative to object to or take action with respect to any breach of any provision of this Agreement by Recipient shall not operate or be construed as a waiver of or consent to that breach or any subsequent breach by Recipient.

13. **EXCEPT AS STATED BELOW, RECIPIENT HEREBY IRREVOCABLY SUBMITS HIMSELF TO THE JURISDICTION OF THE STATE COURTS OF TRAVIS COUNTY, TEXAS AND THE FEDERAL DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION. RECIPIENT HEREBY WAIVES ALL QUESTIONS OF PERSONAL JURISDICTION FOR THE PURPOSE OF CARRYING OUT THIS PROVISION. RECIPIENT HEREBY IRREVOCABLY AGREES THAT SERVICE OF PROCESS MAY BE MADE UPON HIM IN ANY LEGAL PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT OR THE RELATIONSHIP CREATED BY THIS AGREEMENT BY ANY MEANS ALLOWED BY TEXAS OR FEDERAL LAW. RECIPIENT FURTHER AGREES THAT VENUE FOR ANY LEGAL PROCEEDING RELATING TO OR ARISING OUT OF THIS AGREEMENT SHALL BE TRAVIS COUNTY, TEXAS; PROVIDED, HOWEVER, WITH RESPECT TO ANY ACTION FOR INJUNCTIVE OR OTHER EXTRAORDINARY RELIEF, COMPANY AND/OR REPRESENTATIVE MAY BRING SUCH ACTION IN ANY STATE OR FEDERAL DISTRICT COURT WHICH HAS JURISDICTION. WITH RESPECT TO ALL CLAIMS, CONTROVERSIES, DISPUTES, OR ACTIONS, THIS AGREEMENT SHALL BE INTERPRETED AND CONSTRUED UNDER TEXAS LAW (EXCEPT FOR TEXAS CHOICE OF LAW RULES).**

14. The parties agree that each of the foregoing covenants shall be construed as independent of any other covenant or provision of this Agreement. If all or any portion of a covenant in this Agreement is held unreasonable or unenforceable by a court or agency having valid jurisdiction in an unappealed final decision to which Company and/or Representative is a party, Recipient expressly agrees to be bound by any lesser covenant subsumed within the terms of such covenant that imposes the maximum duty permitted by law, as if the resulting covenant were separately stated in and made a part of this Agreement.

15. This Agreement contains the entire agreement of the parties regarding the subject matter hereof. This Agreement may be modified only by a duly authorized writing executed by all parties.

16. All notices and demands required to be given hereunder shall be in writing and shall be sent by personal delivery, expedited delivery service, certified or registered mail, return receipt requested, first-class postage prepaid, facsimile or email (provided that the sender confirms the facsimile or email by sending an original confirmation copy thereof by first class mail within three (3) business days after transmission thereof), to the respective parties. "Business Day" means any day other than Saturday, Sunday, or a national holiday on which federally chartered banks are authorized by law to close.

Notices to Company:	KELLER WILLIAMS REALTY, LLC
	1221 South Mopac Expressway
	Suite 400
	Austin, Texas 78746
	Attention: Legal/Franchise Systems Department
	Emai: <a href="mailto:legal@kw.com">legal@kw.com</a>

Notices to  
Representative:

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Notices to Recipient:

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Any notices sent by personal delivery shall be deemed given upon receipt. Any notices given by email or facsimile shall be deemed given upon transmission, provided confirmation is made as provided above. Any notices sent by expedited delivery service or certified or registered mail shall be deemed given three (3) business days after the time of mailing. Any change in the foregoing addresses shall be effected by giving fifteen (15) days written notice of such change to the other party.

17. The rights and remedies of Company under this Agreement are fully assignable and transferable and shall inure to the benefit of its successors, assigns and transferees. The respective obligations of Representative and Recipient hereunder are personal in nature and may not be assigned by Representative or Recipient, as applicable without the consent of Company.

18. Company shall have the right to execute this Agreement as a party, but in all cases Company shall be a third-party beneficiary of this Agreement with full right and authority to enforce the terms of this Agreement against Recipient regardless of whether Company executes this Agreement.

IN WITNESS WHEREOF, the undersigned have entered into this Agreement as witnessed by their signatures below.

**REPRESENTATIVE:**

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By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**RECIPIENT:**

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