

SAN DIEGO MLS CONFIDENTIAL DATA ACCESS AGREEMENT – RETS IDX – BROKER/AGENT

This Access Agreement specifies the terms and conditions pursuant to which San Diego MLS, Inc., a California corporation ("San Diego MLS"), will grant you ("You" or "Broker") or Vendor (as defined below), depending on whether You download, manipulate and display the IDX Data (as defined below) or have Vendor do so on Your behalf, access to IDX Data. This Access Agreement shall begin on the date (the "Effective Date") that You indicate Your agreement with the terms and conditions of this Access Agreement by "clicking" the "I Agree" button below.

Whereas, San Diego MLS operates a regional multiple listing service ("MLS") in connection with the sale of real estate in several jurisdictions in California; and

Whereas, Broker wishes to obtain, or wishes for Vendor to obtain, and San Diego MLS wishes to provide certain IDX Data; and

Whereas, the parties wish to set forth the terms on which Broker or Vendor, as the case may be, may access the San Diego MLS RETS IDX Server containing listing data from San Diego MLS's database and publish such data on the Internet on behalf of Broker.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, You agree as follows:

1. Definitions. As used herein, the following terms have the meanings set forth below:

"Agent" means an agent that is a Subscriber to the San Diego MLS MLS as defined by the San Diego MLS Rules and Regulations.

"IDX Data" means, and is restricted to, a subset (selected by San Diego MLS) of the listing data in San Diego MLS's database in which various broker Participants have given San Diego MLS permission to disseminate to other participating broker Participants for the purpose of Internet display on web sites of those broker Participants who have agreed to participate in the IDX program.

"Broker" means the entity signing this Agreement that is a Participant of the San Diego MLS MLS as defined by the San Diego MLS Rules and Regulations.

"Claims" means any and all damages, losses, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of, in connection with or relating to, use, copying and/or publication of the IDX Data, including, but not limited to, claims relating to infringement of patent, copyright or other proprietary rights of third parties.

"Data Fields" means those data fields (e.g. all RETS resources, classes [property types], property type statuses, media and data fields) that You wish to download or that you wish Vendor to download from San Diego MLS's RETS server, as specified by You below, and that San Diego MLS has approved for downloading.

"Vendor" means an entity that is not an employee of Broker and that performs IDX Data downloading, manipulation, and formatting on behalf of Broker.

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(858) 72-MYMLS 726-9657
Email: idx@sdmls.com
www.sdmls.com

IDX Minimum Requirements

The following checklist outlines the compliance requirements set forth by **SAN DIEGO MLS**. Use this checklist to review your website. Noncompliant sites will delay your request for the IDX display solution.

☐ **1. The SAN DIEGO MLS public disclaimer language must be added to the IDX homepage of the Agent's website and any website featuring the San Diego MLS IDX data.**

"This information is deemed reliable but not guaranteed. You should rely on this information only to decide whether or not to further investigate a particular property. BEFORE MAKING ANY OTHER DECISION, YOU SHOULD PERSONALLY INVESTIGATE THE FACTS (e.g. square footage and lot size) with the assistance of an appropriate professional. You may use this information only to identify properties you may be interested in investigating further. All uses except for personal, non-commercial use in accordance with the foregoing purpose are prohibited. Redistribution or copying of this information, any photographs or video tours is strictly prohibited. This information is derived from the Internet Data Exchange (IDX) service provided by San Diego MLS. Displayed property listings may be held by a brokerage firm other than the broker and/or agent responsible for this display. The information and any photographs and video tours and the compilation from which they are derived is protected by copyright. Compilation © 2019 San Diego MLS."

Please note: Each year, you must update the "[Compilation © 2019 San Diego MLS](#)" to the current year.

☐ **2. The site must be finished and must have a location where it can be viewed (active URL)**

Prior to submitting your application for IDX access to **SAN DIEGO MLS** data, the site must be completed and viewable by **SAN DIEGO MLS** to verify for compliance. If the website has not been published on the internet at the time of your submittal, please provide us with the temporary URL to the Agent's website.

☐ **3. The use of the acronym, "MLS", in the URL or on the site's search tab, is not acceptable.**

Using the acronym, "MLS" is considered misleading to the public, as they are not actually searching the MLS, but a specific set of data from the MLS. If you have verbiage such as, "search every/all listing(s) in the MLS" you will need to change that. There is a small percentage of Broker's that have opted-out of IDX, those listings are not going to be found in any IDX solution.

(Refer to San Diego MLS Rules & Regulations. 12.18)

☐ **4. The California DRE license number of any Agent/Broker must be listed on the website.**

Your Broker's DRE license number must be on the homepage of your website. The DRE has now specified a criteria for display: The DRE number must include ALL 8 digits of the license number (including any leading 00's) and it must include the state of the license: (example: CA DRE #00123456). The rule goes on to say, **"the type size of the license identification number shall be no smaller than the smallest size type used in the solicitation material."**

12.16.4 Website Name and Status Disclosure. MLS Participants' firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner. Websites of Subscribers affiliated with a Participant's firm shall disclose the firm's name and the Subscriber's state(s) of licensure in a reasonable and readily apparent manner.

☐ **5. The brokerage/firm name must be prominently displayed on the website's homepage.**

If you have a team or division logo it must be clear which brokerage/firm you are affiliated with. This can be done by making sure that the brokerage/firm logo is **larger** than your own and/or stating that your team is a part of said brokerage.

☐ **6. The brokerage/firm contact information must be displayed on the website's homepage.**

This includes the phone number, physical address, and name of your brokerage/firm.

☐ **7. The brokerage/firm logo must be displayed on the website's homepage.**

SAN DIEGO MLS requires that the logo of your brokerage/firm is prominently displayed on the homepage of your site. It must be clearly identifiable and placed in a location where the consumer can easily view it.

☐ **8. The name of the agent who owns the site must be prominently displayed on the homepage.**

The full name of the Agent who owns or sponsors the website must be prominently displayed on the homepage. This means, that you will not be able to create a stealth or masked site that does not seem to be affiliated with an Agent. **NOTE:** If this is a corporate site, add the Broker's (who is applying for IDX) name & contact information on the homepage, under the "About Us" or "Contact Us".

☐ **9. The applicant must be an active member of SAN DIEGO MLS – No RECIPROCAL Agents**

To qualify for an IDX feed, the applicant and any Agent(s) on your must be an active subscriber with the SAN DIEGO MLS. Agents who are part of the Reciprocal network cannot obtain the feed unless they become a full subscriber to SAN DIEGO MLS. If you are not a full member, please email idx@sdmls.com to obtain information on becoming a member.

☐ **10. If you are including an Agent roster on your site (showing agents on your team/in your office),**

You must make sure that any person listed on your site are ACTIVE San Diego MLS members. Those who are not active members of SAN DIEGO MLS, are noted with their official job title (i.e. Office Assistant/Transaction Coordinator, etc.). This is to ensure that there is no confusion over whether they are a member of your brokerage as an active SAN DIEGO MLS subscriber. Also, please make certain that you display their DRE license numbers along w/their contact information.

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“Rules” means San Diego MLS’s Multiple Listing Service Rules and Regulations, revised as of June 2012 and further revised from time to time, and San Diego MLS’s Business Rules.

2. Non-Exclusive License. San Diego MLS hereby grants to You, and Vendor if applicable, subject to the terms and conditions of this Agreement, a nonexclusive license to access, download and publish on the Internet, in whole or in part, the IDX Data during the Term only on behalf of You and Your affiliated Agents if applicable. You agree that You or Vendor shall obtain IDX Data only from San Diego MLS’s RETS IDX server unless specifically given written permission to obtain data from other San Diego MLS servers, programs or sources. You hereby acknowledge and agree that San Diego MLS is not supplying any software, programming assistance or tangible property of any kind in connection with such license and, if needed, You or Vendor must obtain such items at Your or Vendor’s sole cost and expense. You further acknowledge and agree that in the event that San Diego MLS, in its sole discretion, determines that Your or Vendor’s queries or other interactions with the RETS IDX server or any other portion of San Diego MLS’s technology system is harmful to San Diego MLS or the performance of San Diego MLS’s technology system, San Diego MLS may immediately temporarily suspend Your or Vendor’s access to the RETS IDX server, the IDX Data or any other portion of San Diego MLS’s technology system. In the event of such a suspension San Diego MLS agrees to reasonably cooperate with You and/or Vendor until any such problems are resolved to the satisfaction of San Diego MLS. If You use a Vendor, You will provide San Diego MLS with Vendor’s identity below. You will also list any affiliated Agents for whom You wish to publish or wish Vendor to publish IDX Data below. Should You wish to publish or wish Vendor to publish IDX Data on behalf of an additional affiliated Agent after You agree to this Agreement, You shall notify San Diego MLS of the same and the identity of the Agent. You will not publish and will not allow Vendor to publish IDX Data on behalf of an affiliated Agent unless and until San Diego MLS has given You express written permission to do so. Should You terminate Your relationship with Vendor or switch to a new IDX vendor, You agree to notify San Diego MLS of the same in writing within five (5) business days of the date of such an occurrence.

3. Fees. You shall pay fees in accordance with the Schedule of IDX Fees published on San Diego MLS’s website found at www.SanDiegoMLS.com. San Diego MLS may make reasonable adjustments to the IDX Fees at any time by giving You at least 30 days advance notice of any such adjustment.

4. Ownership. Nothing herein shall constitute a transfer of title to the IDX Data. Without limiting the generality of the foregoing, You hereby acknowledge and agree that You and Vendor shall have no right to retain or use any IDX Data except as provided herein and in conjunction with the Rules. You also acknowledge and agree that San Diego MLS may enhance, augment, reformat, watermark or otherwise manipulate (collectively “Manipulations”) the IDX Data. You agree to reproduce or to cause Vendor to reproduce all such Manipulations each and every time You or Vendor make the IDX Data available to the public.

5. Reasonable Security Measures. You shall take or cause Vendor to take reasonable technical security measures to protect the IDX Data against unauthorized use, copying or distribution including, without limitation, taking reasonable measures to prevent the IDX Data from being mechanically harvested, “scraped” or otherwise copied. Such measures shall be at least equivalent to then-current industry standards. If You are responsible for the Terms of Use of any website that displays IDX Data, you shall cause such Terms of Use to include the following language: “By submitting a query or otherwise reviewing the information on this

website concerning real property listings (the "Data") you agree to the following: (i) you will not access the Data through automated or high-volume means; and (ii) you will not "scrape,"

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harvest or otherwise copy the Data except pursuant to your personal non-commercial use of the Data solely to identify real property listings that you may be interested in investigating further.”

6. Term and Termination. This Access Agreement shall begin on the Effective Date and shall expire one (1) year from the Effective Date. Shortly before expiration of the Access Agreement, San Diego MLS may, in its sole discretion, give You the opportunity to renew the Access Agreement.

Each of the following shall constitute a “Termination Event” hereunder:

- (i) A material default in Your or Vendor’s performance of any of the covenants or conditions of this Access Agreement if the same shall not have been cured by You within ten (10) days after You receive written notice from San Diego MLS setting forth with specificity the nature of such default;
- (ii) You no longer have active MLS service through San Diego MLS;
- (iii) You fail to comply with the Rules;
- (iv) You fail to respond within two business days to any inquiry from San Diego MLS directed to the contact information for You then on file with San Diego MLS;
- (v) You or Vendor exceed the RETS Daily Number Download Limit specified by San Diego MLS;
- (vi) You or Vendor download data from Data Fields not approved by San Diego MLS; or
- (vii) Upon thirty (30) days’ prior written notice of termination given by You or San Diego MLS for any reason or for no reason.

At any time following the occurrence of a Termination Event described above, San Diego MLS may terminate the Access Agreement immediately and without further notice or other action and San Diego MLS may immediately terminate Your and/or Vendor’s access to the IDX Data.

7. Destruction of IDX Data Upon Termination. Within five (5) business days of the termination of this Access Agreement, You shall delete or shall cause Vendor to delete, purge or otherwise destroy all IDX Data in your possession, custody or control and shall verify such destruction by written notice of the same to San Diego MLS signed by an individual with authority to make such a binding representation on Your behalf.

8. Warranties and Covenants. You hereby warrant, represent and covenant as follows:

(a) You will comply and will cause Vendor to comply in all respects, and at no cost to San Diego MLS, with any and all conditions, requirements or restrictions established by San Diego MLS with respect to use or publication of the IDX Data.

(b) You hereby acknowledge that You have reviewed a copy of the Rules available at www.SanDiegoMLS.com. You shall comply and shall cause Vendor to comply, in all respects and at no cost to San Diego MLS, with the Rules, including, but not limited to, rules or regulations concerning confidential information, other forms of advertising, Broker to Broker communication and the display of IDX Data on the Internet and in printed media.

(c) You shall not download any IDX Data unless and until You receive written permission from San Diego MLS. You shall cause Vendor to refrain from downloading on Your behalf any IDX Data unless and until You receive written permission from San Diego MLS.

(d) You will download IDX Data only from Data Fields and will require Vendor to do the same.

(e) You will not display IDX Data and shall cause Vendor to refrain from displaying IDX Data on Your behalf unless and until San Diego MLS has given You express written permission to do so.

(f) You or Vendor are the only entity that downloads, controls or otherwise "touches" the IDX Data on Your behalf and/or on behalf of the Brokers and/or Agents with which you have a relationship and You agree to notify San Diego MLS immediately if you learn of any facts which render the foregoing statement untrue. Furthermore, if You (as opposed to Vendor) download, control or otherwise "touch" the IDX Data, will display a small but legible "by line" indicating Your identity (corporate or business name) in a manner sufficient to allow San Diego MLS to immediately identify You whenever and wherever You cause IDX Data to be displayed (e.g. "IDX Data display by XYZ, Inc.").

(g) You will use the IDX Data only for display on one or more websites controlled by You.

(h) Except for displaying the IDX Data on one or more websites controlled by You, You shall not make the IDX Data available to any third party such as a real estate data aggregator or otherwise repurpose the IDX Data.

(i) You actively endeavor to make or accept offers of cooperation and compensation with respect to properties of the type that are listed on the MLS and You shall use the IDX Data only in connection with such activities.

(j) On a quarterly basis, You shall or You shall cause Vendor to delete, destroy or otherwise purge all copies of any IDX Data more than two (2) years old in Your possession, custody or control.

9. YOU ACKNOWLEDGE AND EXPRESSLY AGREE THAT SAN DIEGO MLS'S ACTUAL DAMAGES IN THE EVENT OF A VIOLATION OF SECTION 8(c)-(j) WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO ASCERTAIN AND THAT THE APPROPRIATE AMOUNT OF DAMAGES IS \$2,500. NOTWITHSTANDING THE FOREGOING, YOU EXPRESSLY AGREE THAT THE DAMAGES TO BE PAID BY YOU FOR A VIOLATION OF SECTION 8(c)-(j) SHALL BE AS FOLLOWS: \$250 FOR THE FIRST VIOLATION, \$1,000 FOR A SECOND VIOLATION WITHIN FIVE YEARS OF THE FIRST VIOLATION AND \$2,500 FOR A THIRD VIOLATION WITHIN FIVE YEARS OF THE SECOND VIOLATION. YOU FURTHER AGREE THAT ANY VIOLATION SHALL BE A "TERMINATION EVENT" PURSUANT TO PARAGRAPH 6.

10. Audit Rights. Upon written notice given at least five (5) business days in advance, You agree to allow San Diego MLS or its designee to audit Your systems and facilities to investigate whether or not You are in compliance with the terms of this Access Agreement. San Diego MLS shall reasonably cooperate with You by honoring Your reasonable requests with respect

to audit procedures to minimize any disruption to Your regular course of business. Notwithstanding the foregoing, You agree to allow San Diego MLS to begin any such audit on the fifth (5th) business day following San Diego MLS's delivery of written notice of the audit. Should the audit reveal one or more material breaches of this Access Agreement, You shall promptly reimburse San Diego MLS the reasonable cost (including reasonable charges for the time the auditor(s) spend conducting the audit as well as any travel and accommodation costs) of the audit. Should the audit fail to reveal any material breaches, You shall not be responsible for such costs.

11. Assignment. You may not assign this Access Agreement without the prior written consent of San Diego MLS, which may be withheld in its sole and absolute discretion.

12. Notice. All notices and other communications hereunder shall be in writing and shall be (a) personally delivered, (b) transmitted by certified mail, return receipt requested, (c) sent by Federal Express or similar expedited delivery service or (d) transmitted by telecopy with confirmation of transmission. All such notices or other communications shall be deemed to have been given on the date they are received or refused as the case may be.

13. Confidentiality.

(a) *General Confidentiality*. Unless You prove conclusively to the contrary by a preponderance of the evidence that certain material is not encompassed by this Access Agreement, all material accessed by, or disclosed by San Diego MLS to, You shall be presumed to be (i) confidential, (ii) trade secrets of San Diego MLS (iii) and proprietary information of San Diego MLS (collectively, without distinction, "Proprietary Information").

(b) *Duty of Confidentiality*. Except as expressly allowed pursuant to this Access Agreement, You agree to maintain and preserve the confidentiality of the Proprietary Information and not to disclose such information to third parties without the prior written consent of San Diego MLS; provided, however, that You shall have no such obligation with respect to use or disclosure to others not parties to this Access Agreement of such Proprietary Information as You can establish that You received at any time from a source (other than San Diego MLS) lawfully having the right to disclose such information. Notwithstanding the above, nothing herein shall prevent You from disclosing all or part of the Proprietary Information that You are legally compelled to disclose (by oral deposition, interrogatories, request for information or documents, subpoena, civil investigative demand, or any other process), provided, however, that before any such disclosure, You shall notify San Diego MLS in writing of any such order or request to disclose and cooperate with San Diego MLS (at San Diego MLS's cost) with respect to any procedure San Diego MLS wishes to pursue to protecting against or limit such disclosure.

14. Release and Indemnification. You hereby release and discharge San Diego MLS from any and all Claims. You agree to defend and indemnify San Diego MLS from and against all Claims, provided San Diego MLS notifies You promptly in writing of a Claim. San Diego MLS shall have full control over the defense and settlement of any such Claim.

15. Survival. Notwithstanding any other provision herein, the obligations of the parties, and each of them, contained in Sections 1, 4, 7, 10 and 12-16 shall survive any termination of this Access Agreement. Furthermore, any obligations or duties, including without limitation any money owed by either Party, shall survive termination of this Access Agreement.

(j) *Further Assurances.* You agree to cooperate fully with San Diego MLS and to execute such further instruments, documents and agreements, and to give such further written assurances as San Diego MLS may reasonably request to better evidence and reflect the transactions described in and contemplated by this Access Agreement, and to carry into effect the intents and purposes of this Access Agreement.

Application for Agent IDX Website:

Agent Name: LEE NIGHTINGALE MLS Agent ID: 685063
Agent Email Address: leenightingale@kw.com
Agent Website URL: leenightsells homes.com
Staging/Temporary URL (if available): leenightsells homes.rs 5, aios - staging.com
Company Name: KELLER WILLIAMS CARMEL VALLEY ^{DE MATR} MLS Office ID(s): 01524589
Company Address: 12780 HIGH BLUFF DR # 130
Company City, State and Zip: SAN DIEGO, CA 92130
Designated Broker Name: MARC PLESTER MLS Broker ID: 00862074

By "signing" here, You agree that You have read and agree to be bound to the terms and conditions of this Access Agreement.

Broker Signature: [Signature] Date: 8-24-20
Agent Signature: L. Nightingale Date: 8/24/20

Vendor Information:

Vendor Name (Company or Individual): THE DESIGN PEOPLE INC. / AGENT IMAGE
E-mail address (mandatory): rolman.gillespie@agentimage.com
Street Address: 1700 E. WALNUT AVE Ste 400, EL SEGUNDO CA 90245
Phone: 310.577.9222 x728 Fax: _____

RETS IDX Processing Fee Payment Information: Non Refundable - \$25.00

I hereby authorize SAN DIEGO MLS, Inc. to charge my credit card, noted below, for my
RETS IDX Application Processing Fee.

By submitting this application and signing the credit card authorization below, I agree and understand that this fee is Non Refundable once the application has been received by San Diego MLS (whether sent by myself or by the web consulting company acting on my behalf).

I also understand that this fee is non-transferable. If multiple applications are submitted, each application will incur a \$25 processing fee.

Visa/MC # 4266 8414 6742 5870 Exp 12 / 23

AmEx / Discover # _____ Exp _____ / _____

Cardholder Signature L. Nightingale Date 8/24/20