SETTLEMENT AGREEMENT
BETWEEN
THE MISSOURI REAL ESTATE COMMISSION
AND
THOMAS W. BOOTH
AND
BOOTH PROPERTY MANAGEMENT, LLC

Thomas W. Booth ("Booth"), Booth Property Management, LLC, ("Booth Property") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Booth's real estate broker associate license, license number 2003006487, and Booth Property's real estate association license, license number 2009007882, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2013. The MREC, Booth, and Booth Property jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2013.

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[1] All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

Booth and Booth Property acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to crossexamine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Booth and Booth Property may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to them by law, Booth and Booth Property knowingly and voluntarily waive each and every one of these rights and freely enter into this Settlement Agreement and agree to abide by the terms of this document as they pertain to them.

Booth and Booth Property acknowledge that they have received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Booth and Booth Property stipulate that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Booth's real estate broker license, license number 2003006487, and Booth Property's real estate association license, license number 2009007882, are subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Booth and Booth Property in Part II herein is based only on the agreement set out in Part I herein. Booth and Booth Property understand that the MREC may take further disciplinary action against them based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC, Booth and Booth Property herein jointly stipulate to the following:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2013, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.

2. Thomas W. Booth ("Booth") is licensed as a Real Estate Broker Associate, license number 2003006487. At all times relevant herein, Booth's real estate license was current and active.

3. Booth Property Management, LLC ("Booth Property") is licensed as a Real Estate Association, license number 2009007882. At all times relevant herein, Booth Property's real estate license was current and active.

4. At all times relevant hereto, Booth is and was the designated broker for Booth Property, and as such, bears responsibility for his own conduct as well as that of Booth Property and its affiliates.

5. Section 339.710(12), RSMo. Supp. 2013, defines the term "designated broker" and provides:

> **"Designated broker"**, any individual licensed as a broker who is operating pursuant to the definition of "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed

> by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker[.]

6.Rule 20 CSR 2250-8.020(1), regarding the supervision of real estate related activities of a brokerage, states in part:

> Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership.

7.Rule 20 CSR 22508.120(7), regarding the management of escrow accounts, states:

> The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

The First Audit

8. On or about April 26, 2011, the MREC conducted an audit of the real estate activity performed by Booth and Booth Property during the

period of April 2010 through April 2011. The audit revealed the following problems:

i. Booth Property failed to maintain a separate escrow account in order to deposit rent into that account.

ii. Booth Property deposited all rent received into the brokerage operating account instead of placing all rent received into a separate escrow account.

iii. On at least eight occasions, Booth Property disbursed funds from its account when the owner's account balance was not sufficient to cover the disbursement.

9. Booth Property and Booth's failure to maintain a separate escrow account and failure to deposit all rent received in said escrow account is in violation of Sections 339.100.2(1) and 339.105.1, 20 CSR 2250-8.120 (4), and 20 CSR 2250-8.220(3), which state, in pertinent parts:

Section 339.100.2(1):

> The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any license who was failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing[.]

Section 339.105.1:

1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account[.]

20 CSR 2250-8.120 (4):

Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds, and funds paid by or for the parties upon closing of the transaction. No broker

> shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo[.]

10. Booth Property's and Booth's disbursal of funds on eight separate occasions out of its account when the owner's balance was not sufficient to cover the disbursement, is in violation of 20 CSR 2250-8.220(1), which states:

> (1) A broker shall establish and maintain a separate escrow account(s), to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for the owner's(s') property(ies) is sufficient to cover the disbursements.

11. Because of their failure to maintain a separate escrow account and deposit rent received within that account and their violations of Section 339.105.1, 20 CSR 2250-8.120(4), and CSR 2250-8.220(3), cause exists to discipline Booth's and Booth Property's real estate licenses under § 339.100.2(1) and (15), which provides:

> (1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the

> funds of others, until the transaction involved is consummated or terminated, unless all parties having an interest in the funds have agreed otherwise in writing[.]
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> (15) Violation of, or attempting to violate, directly or indirectly, or assisting or enabling any person to violate, any provision of sections 339.010 to 339.180 and sections 339.710 to 339.860*, or of any lawful rule adopted pursuant to sections 339.1010 to 339.180 and sections 339.710 to 339.860*[.]

The Second Audit

12. Between October 3, 2012 and November 1, 2012, the MREC conducted a limited re-audit of the real estate activity performed by Booth and Booth Property. The audit revealed the following problems:

i. There was an identified shortage in the property management/ rental escrow account, Commerce Bank, account number xxxxxxx84, of $109.65.

ii. Booth paid three personal bills out of the property management/ rental escrow account, Commerce Bank, account number xxxxxxx84, on or about January 19, 2012, February 29, 2012, and July 30, 2012.

iii. Booth deposited personal funds on two occasions into the property management/rental escrow account, Commerce Bank,

account number xxxxxxx84, on or about September 25, 2012 and October 4, 2012.

iv. Booth Property and Booth used three different spelling variations for Booth Property Management, LLC without registering those fictitious names with the Missouri Secretary of State. Those names include Booth Property Mngt, LLC, Booth Property Managemen LLC, and Booth Property Mgmt, LLC.

v. Booth Property and Booth improperly used Booth Property as the broker's legal name while conducting real estate activity on at least two occasions.

13. The identified shortage within the property management/rental escrow account, Commerce Bank account number xxxxxxx84, in conjunction with Booth's commingling of personal funds within the same property management/rental escrow account violates § 339.105.1, which states, in pertinent part:

> 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in

> writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account[.]

14. Booth Property and Booth's use of three unregistered fictitious names and use of Booth Property as the broker's legal name while conducting real estate activity violates 20 CSR 2250-4.030, which states:

> Any broker doing business under any name other than the broker's legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200-417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

15. Because of the violations of § 339.105.1 described above, cause exists to discipline Booth's and Booth Property's real estate licenses under Section § 339.100.2(15), which is set forth above.

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in

this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Supp. 2013.

16. **Booth's and Booth Property's licenses are on probation.** Booth's license as a Real Estate Broker Associate, license number 2003006487 and Booth Property's license as a Real Estate Association, license number 2009007882 are hereby placed on PROBATION for a period of TWO YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Booth and Booth Property shall be entitled to practice as a Real Estate Broker Associate and as a Real Estate Association under Chapter 339, RSMo, as amended, provided Booth and Booth Property adheres to all the terms of this agreement.

17. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Booth and Booth Property shall keep the MREC apprised at all times of their current address and telephone number at each place of residence and business. Booth and Booth Property shall notify the MREC in writing within ten (10) days of any change in this information.

B. Booth and Booth Property shall timely renew their real estate licenses, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain their licenses in a current and active status. During the disciplinary period, Booth and Booth Property shall not place their real estate licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Booth and Booth Property may surrender their real estate licenses by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Booth and Booth Property apply for a real estate license after surrender, Booth and Booth Property shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

C. Booth and Booth Property shall meet in person with the MREC or its representative at any such reasonable time or place as required by the MREC or its designee upon notification from the MREC

or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.

D. Booth and Booth Property shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

E. During the probationary period, Booth and Booth Property shall, if present at their respective place of business, accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Booth and Booth Property shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, and all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Booth's and Booth Property's licenses as a real estate broker associate and real estate association under § 339.100.2, RSMo, as amended, that

accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

G. Broker Acknowledgement. If at any time during the disciplinary period Booth wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer their license. Booth must obtain the Broker Acknowledgement form from the MREC.

H. Quarterly Audit Reports. Booth and Booth Property shall, at his own expense, ensure that quarterly audits of their registered escrow account, account number xxxxxx284, maintained at Commerce Bank, are conducted and completed by a certified public accountant (CPA) approved by the MREC. Within 15 calendar days of the effective date of this Settlement Agreement, Booth and Booth Property shall submit to the MREC in writing a list of at least three CPAs, including name, address, and relationship to Booth and Booth Property. The MREC may approve one or more of the listed CPAs or may require Booth and Booth Property, on grounds that are reasonable, to submit

additional names for consideration and approval. Booth and Booth Property shall, at their own expense, retain an approved CPA to conduct and complete the quarterly audits. The quarterly report should contain a three-way reconciliation from the check register to the bank balance to the owner balances. Such quarterly reports shall begin with the third quarter ending September, 30 2014 and continue throughout the disciplinary period, ending with the quarter ending in June 2016. Within seven calendar days of completion of each quarterly audit, Booth and Booth Property shall provide the MREC with written confirmation of the audit's completion. Further, within 30 days of completion of each quarterly audit, the CPA conducting and completing the audit will mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that his/her firm completed a reconciliation of the account and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to prove the reconciliation should be submitted with the CPA's statement. If the CPA should find that the three-way reconciliation does not match, the

CPA report should include the details and documentation necessary to show that all discrepancies were identified and corrected.

Civil Monetary Penalties

I. As discipline related to the subject matter of this Settlement Agreement, Booth and Booth Property jointly and severally agree to pay a civil penalty in the total amount of $500. Said penalty is authorized under § 339.205, RSMo Supp. 2013.

J. Booth and Booth Property jointly and severally agree to pay the $500 civil penalty by certified check made payable to the "Missouri Real Estate Commission, State of Missouri" and mailed to Missouri Real Estate Commission, P.O. Box 1339, Jefferson City, MO 651021339. Booth and Booth Property shall postmark and mail or hand deliver said check within 60 days of the date when this Settlement Agreement becomes effective.

K. Funds received pursuant to this agreement shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8 RSMo. Supp. 2013.

L. In the event the MREC determines that Booth and Booth Property have failed to pay any portion of the $500 agreed upon herein,

the MREC may, in its discretion: (1) notify the Attorney General who "may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs and a surcharge of fifteen percent of the penalty plus ten percent per annum on any amounts owed" under § 339.205.4, RSMo Supp. 2013; and (2) impose additional discipline as provided in paragraph 18 herein.

18. Upon the expiration of the disciplinary period, the licenses of Booth and Booth Property shall be fully restored if all requirements of law have been satisfied; provided, however, the MREC may impose additional discipline on Booth and/or Booth Properties, as the case may be, when it finds after a contested hearing before the MREC that Booth or Booth Property has violated any disciplinary terms of this Settlement Agreement. The MREC may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing. Booth and Booth Property agree and stipulate that the MREC has continuing jurisdiction after the expiration of the probationary period herein to hold a contested hearing to determine if a violation of this Settlement Agreement occurred during the probationary period.

19. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

20. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Booth and Booth Property of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

21. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

22. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

23. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its

provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

24. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

25. Booth and Booth Property, together with their partners, members, managers, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the

matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

26. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

SIGNATURES ON FOLLOWING PAGE

LICENSEES		MISSOURI REAL ESTATE COMMISSION
Thomas W. Booth 7-21-14		
Thomas W. Booth	Date	Janet Carder, Executive Director Date: July 29, 2014

Booth Property Management, LLC

By: _____
Thomas W. Booth
Title: Broker
Date: 7-21-14

BERGER, COHEN &
BRANDT, L.C.

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