SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION,
DAVID W. COX,
AND
SKYLINE HOMES, LLC

David W. Cox (Cox), Skyline Homes, LLC (Skyline), and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Cox's license as a Real Estate Broker Associate, no. 1999056083, and Skyline's license as a Real Estate Association, no. 2005015188, will be subject to discipline. Pursuant to Section 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 Section 621.110, RSMo Supp. 2013. The MREC, Cox, and Skyline jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to Section 621.045, RSMo Supp. 2013.

Cox and Skyline 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

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

and substantial evidence; the right to cross-examine 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 Cox and Skyline 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, Cox and Skyline 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.

Cox and Skyline 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. Cox and Skyline stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the MREC that Cox's license as a Real Estate Broker Associate, no. 1999056083,

and Skyline's license as a Real Estate Association, no. 2005015188, 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, Cox, and Skyline in Part II herein is based only on the agreement set out in Part I herein. Cox and Skyline 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, Cox, and Skyline herein jointly stipulate to the following:

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

2. David W. Cox (Cox) is licensed as a Real Estate Broker Associate, license no. 1999056083. At all times relevant herein, Cox's real estate license was current and active.

3. Skyline Homes, LLC (Skyline) is licensed as a Real Estate Association, license no. 2005015188. At all times relevant herein, Skyline's real estate license was current and active.

4. Skyline is a Missouri limited liability company, charter no. LC0571807.

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

6. Section 339.710(12), RSMo, 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[.]

7. 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. . . .

8. Rule 20 CSR 2250-8.120(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).

Applicable Law

9. Section 339.100.2, RSMo., Supp. 2013, states in pertinent part:

> 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 licensee who has 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;
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> ***
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> (3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other

property, coming into his or her possession, which belongs to others;

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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 339.010 to 339.180 and sections 339.710 to 339.860*[.]

10. Section 339.105.1, RSMo., Supp. 2013, states:

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.

11. Section 339.790.2(1), RSMo., Supp. 2013, states:

2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

(1) Accounting in a timely manner for all money and property related to, and received during, the relationship[.]

12. State Regulation 20 CSR 2250-8.090(9)(C), (H) and (I) states:

(9) Every written property management agreement or other written authorization between a broker and the owners of the real estate shall:

(C) Specify whether security deposits and prepaid rents will be held by the broker or the owner;

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(H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;

(I) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a transaction broker and if permitted, the duties and responsibilities of a transaction broker[.]

13. State Regulation 20 CSR 2250-8.120(4) states:

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. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

14. State Regulation 20 CSR 2250-8.220(3) states:

> All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker.

The Audits

15. Between October 2011 and January 2012, the MREC conducted a random audit of Cox's and Skyline's real estate activity from October 2010 until October 2011. In October 2013, the MREC conducted a reaudit of Cox's and Skyline's real estate activity from October 2010 until October 2011. The random audit and reaudit revealed a number of problems, which are detailed in the following paragraphs.

16. On two occasions, Cox and Skyline failed to timely remit funds belonging to others when:

i. Cox and Skyline, on or about September 1, 2011, failed to disburse $250.00 to its client when the property management relationship ended between Cox and Skyline and their client; and

ii. Cox and Skyline, on or about April 13, 2010, failed to disburse a $150.00 security deposit to the tenant when the tenant moved out, and being unable to locate the tenant, they left the

$150.00 security deposit in the security deposit escrow account, Acct. No. xxxxxx0306, rather than remit the funds to their client.

17. By failing to timely remit funds belong to others, Cox and Skyline violated Section 339.790.2(1), RSMo. and provides cause to discipline under Section 339.100.2(3), RSMo. Supp. 2013.

18. On or about January 2013, Cox and Skyline failed to deposit a $150.00 prorated rent payment into its property management escrow account, Acct. no. xxxxxxxx3804, violating Section 339.105.1, RSMo., and State Regulations 20 CSR 2250-8.120(4) and 20 CSR 2250-8.220(3) and providing cause to discipline under Section 339.100.2(1), RSMo.

19. Cox and Skyline commingled personal funds with funds its clients' funds in that:

i. On or about September 2011, Cox and Skyline placed at least $1,000.00 of their clients' funds into a savings account, account no. xxxxxx1382, which also served as a brokerage operating account for Cox's two other businesses;

ii. For the month of September 2011, Cox and Skyline deposited funds into the brokerage operating account, account no. xxxxx3530, for properties managed by Cox and Skyline and

wrote checks to himself or checks from the brokerage operating account for expenditures not related to a managed property; and

iii. On October 19, 2010, Cox deposited a $300.00 security deposit for a property Cox personally owned into a security deposit escrow account, account no. xxxxxx0306, that was maintained by both Cox and Skyline.

20. By commingling personal funds with funds owned by others, Cox and Skyline violated Section 339.105.1, RSMo Supp. 2013.

21. Cox and Skyline's management agreement with an owner, K. Farrar, does not specify whether security deposits and prepaid rents are to be held by the broker or the owner in violation of State Regulation 20 CSR 2250-8.090(9)(C).

22. Cox and Skyline's management agreements with owners K. Farrar, Cline, and Lewis Musser, Inc. did not include a statement which permits or prohibits the designated broker from acting as a dual agent in violation of State Regulation 20 CSR 2250-8.090(9)(H).

23. Cox and Skyline's management agreements with owners K. Farrar and Lewis Musser, Inc. did not include a statement which permits or

prohibits the designated broker from acting as a transaction broker in violation of State Regulation 20 CSR 2250-8.090(9)(I).

24. As described herein, Cox's and Skyline's conduct provides cause to discipline their licenses pursuant to Section 339.100.2(1) and (3), RSMo. Supp. 2013.

25. As described herein, Cox's and Skyline's conduct, which resulted in violations of Missouri Statutes and Regulations, to wit Sections 339.105.1 and 339.790.2(1) and 20 CSR 2250-8.090(9)(C), (H), and (I); 20 CSR 2250-8.120(4); and 20 CSR 2250-8.220(3), provides cause to discipline Cox's and Skyline's licenses under Section 339.100.2(15), RSMo Supp. 2013.

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 Section 536.060, RSMo, and Sections 621.045.4 and 621.110, RSMo Supp. 2013.

26. **Cox's and Skyline's licenses are on probation.** Cox's license as a Real Estate Broker Associate, no. 1999056083, and Skyline's license as a Real Estate Association, no. 2005015188, are hereby placed on PROBATION for a period of TWO (2) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Cox and Skyline shall

be entitled to practice as a Real Estate Broker Associate and Real Estate Association under Chapter 339, RSMo, as amended, provided Cox and Skyline adhere to all the terms of this agreement.

27. **Terms and conditions of the disciplinary period.** Terms and conditions of the probation are as follows:

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

B. Cox and Skyline 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, Cox and Skyline 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, Cox and Skyline may surrender their real estate licenses by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Cox and Skyline apply for a real estate license after surrender, Cox and Skyline 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. Cox and Skyline shall meet in person with the MREC or its representative at any such 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. Cox and Skyline 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, Cox and Skyline shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

F. Cox and Skyline shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. The MREC shall not bring an action for violation of the terms and conditions of this Settlement Agreement based on violation of local,

state, and federal laws that would not provide cause for discipline under 339.100, RSMo. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Cox's and Skyline's licenses as a real estate broker under Section 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 Cox and Skyline wish to transfer their license affiliation to a new broker/brokerage, they 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. Cox and Skyline must obtain the Broker Acknowledgement form from the MREC.

28. Upon the expiration of the disciplinary period, the license of Cox and Skyline shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Cox and Skyline have violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing,

vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Cox's and Skyline's licenses.

29. 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.

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

31. 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.

32. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Cox and Skyline agree and

stipulate that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

34. 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.

35. 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.

36. Cox and Skyline, together with their partners, members, managers, heirs, assigns, agents, employees, representatives and attorneys, do 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 Section 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. Section 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.

37. Cox and Skyline understand that they may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Cox's and Skyline's licenses. If Cox and Skyline desire the Administrative Hearing Commission to review this Settlement Agreement, Cox and Skyline may submit their request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

38. If Cox and Skyline request review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission

issues its order finding that the Settlement Agreement sets forth cause for disciplining Cox's and Skyline's licenses. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Cox and Skyline as allowed by law. If Cox and Skyline do not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEES

10-7-14
David W. Cox Date

SKYLINE HOMES, LLC

By: 10-7-14
David W. Cox Date
Managing Member

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director
Date: 10-8-14

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