SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
DELISA D. DELAY and EXECUTIVE INVESTMENTS, LLC.

Delisa D. Delay ("Delay") and Executive Investments, LLC ("Executive") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Delay's license as a broker associate, no. 2000172360 and Executive's license as a real estate association, no. 2005010508, are 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. 2011. The MREC, Delay, and Executive, jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Delay and Executive 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 cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their

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

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 Delay and/or Executive 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, Delay and Executive 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.

Delay and Executive 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. Delay and Executive stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the MREC that Delay's license as a broker associate, license no. 2000172360 and Executive's license as a real estate association, license no. 2005010508, are subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapters 621, RSMo. and 339, RSMo. as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC, Delay, and Executive, in Part II herein is based only on the agreement set out in Part I herein. Delay and Executive 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, Delay, and Executive herein jointly stipulate to the following:

1. Executive Investments LLC is registered with the Missouri Secretary of State as a limited liability company, charter no. LC0546838.

2. Executive Investments LLC was originally licensed by the MREC as a real estate association on March 15, 2005. Its current license number is 2005010508.

3. Executive Investments LLC's real estate association license is scheduled to expire on June 30, 2012.

4. At all time relevant herein, Executive Investment LLC's real estate license was current and active.

5. Executive Investment LLC does business under the fictitious names of "Realty Executives of Branson" and "Realty Executives of Branson LLC" (hereinafter referred to collectively as "Executive"), which are registered with the MREC.

6. The MREC originally issued Delisa D. Delay ("Delay") a broker associate license, license no. 2000172360, on or about July 31, 2006. Delay's license was current and active at all time relevant to this Complaint.

7. At all time relevant herein, Delay was the designated broker of Executive, as defined by Sec. 339.710(12), RSMo. and, as such, Delay bears responsibility for her own conduct as well as that of Executive. Sec. 339.710(12), RSMo. provides:

> For purposes of sections 339.010 to 339.180, and sections 339.710 to 339.860*, the following terms mean:
>
> > (12) "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, limited partnership, association, limited liability corporation, professional corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, limited partnership, association, limited liability company, professional corporation or corporation. Every real estate broker partnership, limited partnership, association, limited liability company, professional corporation or corporation shall appoint a designated broker[.]

8. Delay's real estate license is culpable for the conduct and violations as revealed by the MREC's audits of Executive.

9. References herein to Delay are also references to Executive.

10. References herein to Executive are also references to Delay.

11. At all time relevant herein, Becky Jacobson ("Jacobson") worked as the property manager for Executive.

12. Jacobson is licensed by the MREC as a real estate salesperson, license no. 2006014239.

13. From April 28 to May 2, 2008, an MREC auditor conducted an audit and examination of Executive' business records and escrow accounts ("First Audit") for the period of April, 2007 through April, 2008 ("First Audit Period").

14. On or about April 4-8, 2010 and May 4-5, 2010, an MREC auditor conducted an audit and examination of Executive' business records and escrow accounts ("Second Audit") for the period of April 2009 through April 2010 ("Second Audit Period").

15. During both the First Audit Period and Second Audit Period, Delay and Executive maintained a bank account in which they held client funds relating to property management. This account was maintained at the Commerce Bank, account no. xxxxxx271 ("Property Management Escrow Account").

16. During both the First Audit Period and Second Audit Period, Delay and Executive maintained a bank account in which they held client funds relating to security deposits. This account was maintained at the Commerce Bank, account no. xxxxxx168 ("Security Deposit Escrow Account").

APPLICABLE LAWS

17. Sec. 339.100.2, RSMo. Supp. 2011, provides in pertinent part:

> 2. 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;

(2) Making substantial misrepresentations or false promises or suppression, concealment or omission of material facts in the conduct of his or her business or pursuing a flagrant and continued course of misrepresentation through agents, salespersons, advertising or otherwise in any transaction;

. . . .

(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*[.]

COUNT I: FIRST AND SECOND AUDIT

A. Cause Exists Under §§ 339.100.2(1),(3) and (15), RSMo. For Violations of Sec. 339.105.1, RSMo. and Rule 20 CSR 2250-8.120(4)

18. Sec. 339.105.1, RSMo. Supp. 2011, provides 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.

19. Rule 20 CSR 2250-8.120(4) provides:

(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. 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.

Shortages

20. The First Audit revealed that on four (4) instances, there were shortages in the sum of $1,068.57 in the Property Management Escrow Account, in violation of § 339.105.1, RSMo.

21. The Second Audit revealed that, on eight (8) different properties, there were identified shortages in the sum of $1,631.26 to the Property Management Escrow Account

when checks were paid for expenses but they were not charged (i.e. "booked") to the respective owner(s), in violation of §339.105.1, RSMo.

22. The Second Audit revealed that there were temporary shortages in the Property Management Escrow Account due to negative account balances because Delay disbursed funds when the owners' account balance was not sufficient to cover disbursement, in violation of § 339.105.1, RSMo. including but not limited to the following:

a) A ($50.00) shortage from 5-18-09 through 6-21-09; and ($100.00) from 5-7-09 through 6-4-09 due to expenses paid for 158 Pointe Royale Dr when no owner funds were available to cover the expenses.

b) On 11-20-09, a shortage of ($398.62);

c) On 11-23-09, a shortage of ($1,298.62);

d) On 11-23-09, a shortage of ($1,276.12);

e) On 11-24-09, a shortage of ($523.62);

f) On 11-25-09, a shortage of ($2,908.62);

g) On 11-27-09, a shortage of ($3,731.12);

h) On 12-18-09, a shortage of ($2,181.12); and

i) On 12-21-09, a shortage of ($4,083.12)

Overages

23. The First Audit revealed that there was a $70.00 overage for the property "187 Cedar Pt." in the Property Management Escrow Account because there was no authorization

(or management agreement) to hold funds for the property, in violation of § 339.105.1, RSMo. and Rule 20 CSR 2250-8.120(4).

24. The Second Audit revealed that there were identified overages on April 7, April 8, and May 4, 2010 totaling $994.14 in the Property Management Escrow Account, due to management fees not being removed, in violation of§ 339.105.1, RSMo. Supp. 2011 and Rule 20 CSR 2250-8.120(4).

25. The Second Audit revealed that there was a $300.00 identified overage in the Security Deposit Escrow Account, in violation of Sec. 339.105.1, RSMo. and Rule 20 CSR 2250-8.120(4), because tenant Lewis moved out on 11/09 and his security deposit of $1,500.00 was forfeited. However, $1,200.00 was transferred to the owner on 12/09, leaving a balance of $300.00, which Delay was unable to account for.

Overdrafts

26. The Second Audit revealed that on eight (8) instances, there were overdrafts in the Property Management Escrow Account incurring overdraft fees totaling $210, in violation of § 339.105.1, RSMo. Supp. 2011 and Rule 20 CSR 2250-8.120(4).

27. The conduct of Delay and Executive, individually and collectively, as set forth in Paragraphs 23 through 26, demonstrates that Delay and Executive Investment violated Rule 20 CSR 2250-8.120(4), which provides cause to discipline the real estate licenses of Delay and Executive pursuant to § 339.100.2(15), RSMo. as cited above.

28. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in failing 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; provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(1), RSMo.

29. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, Sec. A, in failing within a reasonable time to account for or to remit any moneys coming into their possession, which belongs to others, provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(3), RSMo. as cited above.

30. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, Sec. A, in creating an identified/unidentified shortage(s) and/or in allowing such shortage(s) to occur and/or to remain in the various above-mentioned escrow accounts, and in creating an identified/unidentified overage(s) and/or in allowing such overage(s) to occur and/or to remain in the various above-mentioned escrow account(s), and/or in allowing overdrafts to occur, demonstrates that Delay and Executive, individually and collectively, failed to maintain the escrow account(s) in violation of Sec. 339.105.1, RSMo. which

provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(15), RSMo. as cited above.

B. Cause Exists Under Sec. 339.100.2(15), RSMo.

1. Violations of Sec. 339.105.3, RSMo.

31. Sec. 339.105.3, RSMo. Supp. 2011, provides, in pertinent part:

> 3. In conjunction with each escrow or trust account a broker shall maintain books, records, contracts and other necessary documents so that the adequacy of said account may be determined at any time. The account and other records shall be provided to the commission and its duly authorized agents for inspection at all times during regular business hours at the broker's usual place of business.

32. Rule 20 CSR 2250-8.120(7) provides:

> 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).

33. During The First Audit, Delay and Executive failed to provide records necessary to determine the adequacy of the Property Management Escrow Account, by twenty-nine (29) instances of no related transactions for checks, six (6) instances of checks not physically retained after being voided, eight (8) instances of deposits which were made but were not reflected on the check register, five (5) instances of deposits with no related transaction, five (5) instances of inaccurate owner statements for the entire First Audit Period, and one instance of check amount discrepancy in which the check register showed

check #1206 was for $108.00 but the bank statement and copy of the check showed a check value of $1,080.00, in violation of § 339.105.3, RSMo.

34. During the Second Audit, Delay and Executive failed to provide records necessary to determine the adequacy of the Property Management Escrow Account, in such numerous instances, Delay failed to retain records, including the owner liability records, voided check(s), complete property liability records for each property for the entire Second Audit Period, and/or invoices in violation of § 339.105.3, RSMo.

35. During the Second Audit, Delay and Executive failed to provide records necessary to determine the adequacy of the Security Deposit Escrow Account, such as failing to maintain a rent roll or detailed security deposit report, to reconcile accounts regularly, maintain a check register or receipts and/or disbursements ledger for the account, to retain all cash receipts issued to tenants, in violation of § 339.105.3, RSMo.

36. As the designated broker of Executive, Delay was responsible for the maintenance of books, records, contracts and other necessary documents so that the adequacy of each escrow may be determined at any time and provided to the MREC and its duly authorized agents for inspection at all times during regular business hours at the usual place of business of Delay and Executive, according to § 339.105.3, RSMo.

37. As the designated broker of Executive, Delay was responsible for the maintenance of the escrow accounts, including the Property Management Escrow Account and the Security Deposit Escrow Account, and for ensuring Executive' compliance with the

statutes and rules related to the brokerage escrow accounts, pursuant to Rule 20 CSR 2250-8.120(7).

38. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in failing to provide records necessary to determine the adequacy of the escrow accounts to the MREC, demonstrates that Delay violated Rule 20 CSR 2250-8.120(7) and Delay and Executive, individually and collectively, violated § 339.105.3, RSMo. which provides cause to discipline the real estate licenses of Delay and Executive pursuant to § 339.100.2(15), RSMo. as cited above.

2. Violations of Rule 20 CSR 2250-8.020(1)

39. Rule 20 CSR 2250-8.020(1) provides:

> (1) 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. A broker shall not be held responsible for inadequate supervision if—
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> > (A) A licensed or unlicensed person violates a provision of Chapter 339, RSMo or the rules for it in conflict with the supervising broker's specific written policies or instructions;
> > (B) Reasonable procedures have been established to verify that adequate supervision was being performed;
> > (C) The broker, upon learning of the violation, attempted to prevent or mitigate the damage;
> > (D) The broker did not participate in the violation;

(E) The broker did not ratify the violation; and
(F) The broker did not attempt to avoid learning of the violation.

40. The Second Audit revealed that, on numerous instances, Delay failed to supervise the real estate activities of Jacobson, the licensed property manager, when Delay allowed Jacobson to maintain the Property Management Escrow Account and all related records without confirming the adequacy or compliance of said account and records, in violation of Rule 20 CSR 2250-8.020(1).

41. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, Sec. B.2, in permitting Jacobson to maintain the Property Management Escrow Account and all related records without confirming the adequacy or compliance of said account and records, demonstrates that Delay and Executive, individually and collectively, violated Rule 20 CSR 2250-8.020(1), which provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(15), RSMo. as cited above.

3. Violations of Sec. 339.780.2, RSMo. and Rule 20 CSR 2250-8.200(1)

42. Sec. 339.780.2, RSMo. Supp. 2011, provide in pertinent part:

> 2. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to establish a limited agency relationship with a seller or landlord shall enter into a written agency agreement with the party to be represented. The agreement shall include a licensee's duties and responsibilities specified in section 339.730 and the terms of compensation and shall specify whether an offer of subagency may be made to any other designated broker.

43. Rule 20 CSR 2250-8.200(1) provides:

> (1) When managing property a licensee shall not rent or lease, offer to rent or lease, negotiate, or offer or agree to negotiate, the rent or lease, list or offer to list for lease or rent, assist or direct in procuring of prospects calculated to result in the lease or rent, assist or direct in the negotiation of any transaction calculated or intended to result in the lease or rent, or show that property to prospective renters or lessees unless the licensee's broker holds a current written property management agreement or other written authorization signed by the owner of the real estate or the owner's authorized agent.

44. The First Audit revealed that on one (1) instance, Delay and Executive managed a property known as "187 Cedar Pt." on behalf of a party to be represented without entering into a written agency agreement, in violation of Sec. 339.780.2, RSMo. and Rule 20 CSR 2250-8.200(1).

45. The Second Audit revealed that Delay and Executive managed a property known as "129 Spruce" on behalf of a party to be represented without entering into a written agency agreement, in violation of Sec. 339.780.2, RSMo. and Rule 20 CSR 2250-8.200(1).

46. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in managing properties on behalf of others without entering into a written agency agreement, constitutes a violation of Sec. 339.780.2, RSMo. and Rule 20 CSR 2250-8.200(1), which provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(15), RSMo. as cited above.

4. Violations of §§ 339.780.1 and .3, RSMo.

47. Sec. 339.780, RSMo. Supp. 2011, provides in relevant part:

> 1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.
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> 3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

48. The First Audit revealed that on six (6) instances, Jacobson, who is not the designated broker and who is not authorized in writing by Delay, the designated broker, to enter into written agreements on behalf of Delay, acted as an agent of a tenant and entered into written agreements, in violation of §§ 339.780.1 and .3, RSMo.

49. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in permitting Jacobson to act as an agent of tenants on several occasions when Jacobson is not the designated broker and Jacobson is not authorized in writing to enter into agreements on behalf of the designated broker, as required by §§ 339.780.1 and .3, RSMo. demonstrate that Delay and Executive, individually and collectively, violated and/or assisted and/or enabled a person to violate §§ 339.780.1 and .3, RSMo. which provides cause

to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(15), RSMo. as cited above.

5. Violations of Rule 20 CSR 2250-8.220(1)

50. Rule 20 CSR 2250-8.220(1) provides:

> (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 that owner's(s') property(ies) is sufficient to cover the disbursements.

51. The First Audit revealed that on four (4) instances, Delay and Executive disbursed funds from the Property Management Escrow Account when the owner's account balance was not sufficient, in violation of Rule 20 CSR 2250-8.220(1), including but not limited to the following:

a) Funds were disbursed For the property "85 Bull Run," with an insufficient account balance, which caused a ($455.38) shortage;

b) Funds were disbursed for the property "597 Van Buren," with an insufficient account balance, which caused a ($400.00) shortage;

c) Funds were disbursed for the property "Pinnacles H-2," with an insufficient account balance, which caused a ($52.00) shortage; and

d) Funds were disbursed for the property "124 Corbin," with an insufficient account balance, which caused a ($50.00) shortage

52. The Second Audit revealed that on eight (8) instances, Delay disbursed funds from the Property Management Escrow Account when the owner's account balance was not sufficient, in violation of Rule 20 CSR 2250-8.220(1), including but not limited to the conduct set forth in Paragraph 22.

53. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in disbursing funds from the Property Management Escrow Account without ensuring that the account balance for that owner'(s') property(ies) was sufficient to cover the disbursements, constitutes a violation of Rule 20 CSR 2250-8.220(1), which provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(15), RSMo. as cited above.

6. Violations of Sec. 339.730.1(1), RSMo.

54. Sec. 339.730.1(1), RSMo. provides:

> 1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:
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> > (1) To perform the terms of the written agreement made with the client[.]

55. The Second Audit revealed that, on numerous instances, Delay and Executive failed to perform the terms of the written agreement with the landlord in that Delay failed to provide monthly statements of income and expenses, in violation of § 339.730.1(1), RSMo.

56. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in failing to perform the terms of the written agreement with the landlord by failing to provide monthly statements of income and expenses for the above-mentioned properties, constitutes a violation of Sec. 339.730.1(1), RSMo. which provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(15), RSMo. as cited above.

C. Cause Exists Under §§ 339.100.2(7),(15) and (23), RSMo. for Violations of §§ 339.020, and 339.150.2 RSMo. and Rule 20 CSR 2250-4.070(1)

57. Sec. 339.100.2, RSMo. Supp. 2011 provides, in pertinent part:

> 2. 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:
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> . . . .
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> (7) Paying a commission or valuable consideration to any person for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860*[.]
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> . . . .
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> (23) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860* who is not registered and currently eligible to practice under sections 339.010 to 339.180 and sections 339.710 to 339.860*[.]

58. Sec. 339.020, RSMo. Supp. 2011, provides:

> It shall be unlawful for any person, partnership, association, or

corporation, foreign or domestic, to act as a real estate broker or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

59. Sec. 339.150.2, RSMo. Supp. 2011 provides:

> 2. No real estate licensee shall pay any part of a fee, commission or other compensation received by the licensee to any person for any service rendered by such person to the licensee in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate, unless such a person is a licensed real estate salesperson regularly associated with such a broker, or a licensed real estate broker, or a person regularly engaged in the real estate brokerage business outside of the state of Missouri.

60. Rule 20 CSR 2250-4.070(1)2 provides:

> (1) Every partnership, association, or corporation must obtain a separate and distinct real estate broker license before transacting business as a broker pursuant to Chapter 339, RSMo. If the partnership, association, or corporation wishes to do business under an assumed or fictitious name, it shall first comply with 20 CSR 2250-4.030 regarding registration of the name.

61. The Second Audit revealed that on one (1) instance, an unlicensed professional corporation, Jeramie Worley, P.C., was acting as a real estate licensee on behalf of Executive, in violation of Sec. 339.020, RSMo. and Rule 20 CSR 2250-4.070(1), including

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2 This version of the rule was effective Sept. 30, 2009. However, the previous version of this rule effective from Sept. 2002 until it was moved in Aug. 2006 to its current section, available in the archives at 4 CSR 250-4.070, is identical, with the exception of the reference to 4 CSR 250-4.030, which was also moved, and provides:

> (1) Every partnership, association or corporation must obtain a separate and distinct real estate broker license before transacting business as a broker pursuant to Chapter 339, RSMo. If the partnership, association or corporation wishes to do business under an assumed or fictitious name, it shall first comply with 4 CSR 250-4.030 regarding registration of the name.

but not limited to, that on or about March 11, 2010, Jeramie Worley PC, on behalf of Executive, entered into a "Buyer's Exclusive Agency Contract" with two buyers.

62. The Second Audit revealed that on two (2) instances, Delay and Executive paid a commission to an unlicensed professional corporation, Jeramie Worley, P.C., in violation of §§ 339.100.2(7) and 339.150.2, RSMo. including but not limited to the following:

a) On or about April 2, 2010, Executive issued a check to Jeramie Worley, P.C. for $2,710.00; and

b) On or about February 25, 2010, Executive recorded issuing a check to Jeramie Worley, P.C. for $5,015.00.

63. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in permitting Jeramie Worley, P.C., an unlicensed professional corporation, to act as a real estate broker, real estate broker-salesperson, and/or real estate salesperson, and/or to advertise or assume to act as such without a license first procured by the MREC, demonstrates that Delay and Executive, individually and collectively, violated and/or assisted and/or enabled a person to violate Sec. 339.020, RSMo. Rule 20 CSR 2250-4.070(1), which provides cause to discipline the real estate licenses of Delay and Executive pursuant to §§ 339.100.2(15) and (23), RSMo. as cited above.

64. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in knowingly employing or engaging Jeramie Worley, P.C. to perform services to Delay for which licensure as a real estate broker or real estate salesperson is

required, including permitting Jeramie Worley, P.C. to enter into an agreement on behalf of Executive and/or receive a commission, when Jeramie Worley, P.C. is not licensed to engage in real estate activities, is a violation of Sec. 339.150.2, RSMo. which provides cause to discipline the real estate licenses of Delay and Executive pursuant to §§ 339.100.2(15) and (23), RSMo. as cited above.

65. The conduct of Delay and Executive, individually and collectively, as set forth in this Count I, in paying a commission to Jeramie Worley, P.C. for acts or services performed in violation of sections 339.010 to 339.180 and sections 339.710 to 339.860, provides cause to discipline the real estate licenses of Delay and Executive pursuant to §§ 339.100.2(7) and (23), RSMo.

D. Cause Exists Under Sec. 339.100.2(16), RSMo.

66. Sec. 339.100.2(16), RSMo. Supp. 2011, provides:

> 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo. 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:
>
> . . . .
>
> (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

67. Sec. 339.040, RSMo. provides, in pertinent part:

> 1. Licenses shall be granted only to persons who present, and

> corporations, associations, or partnerships whose officers, associates, or partners present, satisfactory proof to the commission that they:
>
> (1) Are persons of good moral character; and
>
> (2) Bear a good reputation for honesty, integrity, and fair dealing; and
>
> (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

68. The conduct of Delay and Executive, individually and collectively, as alleged in each section of Count I, individually and collectively demonstrates that Delay and Executive (1) lack good moral character; (2) do not bear a good reputation for honesty, integrity, and fair dealing; and/or (3) are not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo. which provides cause to discipline the real estate licenses of Delay and Executive pursuant to Sec. 339.100.2(16), RSMo.

E. Cause Exists Under Sec. 339.100.2(19), RSMo.

69. Sec. 339.100.2(19), RSMo. provides:

> 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo. 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:
>
> . . . .
>
> (19) Any other conduct which constitutes

untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

70. The First Audit revealed that, on five (5) instances, Delay and Executive provided inaccurate owner's statements.

71. The conduct of Executive and Delay, individually and collectively, in providing inaccurate owner's statements, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, which provides cause to discipline the real estate licenses of Executive and Delay pursuant to Sec. 339.100.2(19), RSMo.

72. The conduct of Executive and Delay, individually and collectively, as alleged in each section of Count I, individually and collectively, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, which provides cause to discipline the real estate licenses of Executive and Delay pursuant to Sec. 339.100.2(19), RSMo.

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. 2011.

1. **Delay's license is on probation.** Delay's license as a broker associate is hereby placed on PROBATION for a period of 2 YEARS. The period of probation shall

constitute the "disciplinary period." During the disciplinary period, Delay shall be entitled to practice as a broker associate under Chapter 339, RSMo. as amended, provided Delay adheres to all the terms of this agreement.

2. **Executive's license is on probation.** Executive's license as a real estate association is hereby placed on PROBATION for a period of 2 YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Executive shall be entitled to practice as a real estate association under Chapter 339, RSMo. as amended, provided Executive adheres to all the terms of this agreement.

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

A. **Delay and Executive agree not to engage in property management for the duration of the disciplinary period.**

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

C. Delay and Executive shall timely renew their real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain their license(s) in a current and active status. During the disciplinary period, Delay and Executive shall not place their real estate license(s) 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, Delay and/or Executive may surrender their real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Delay and/or Executive apply for a real estate license after surrender, Delay and/or Executive 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.

D. Delay and/or Executive 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.

E. Delay and/or Executive shall immediately submit documents showing compliance with the requirements of this settlement agreement to the MREC when requested by the MREC or its designee.

F. During the probationary period, Delay and Executive shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this settlement agreement.

G. Delay and Executive 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. "State" as used herein includes the State of Missouri and all other states and territories of the United States.

4. Upon the expiration of the disciplinary period, the licenses of Delay and Executive shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Delay and/or Executive has 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 Delay's and/or Executive's licenses.

5. 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.

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

7. 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.

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

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

10. 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.

11. 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 339, 610, and 324, RSMo. as amended.

12. Delay and Executive, together with their partners, managers, members, 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.

13. Delay and Executive 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 Delay's and Executive's licenses. If Delay and/or Executive desire the Administrative Hearing Commission to review this Settlement Agreement, Delay and/or Executive 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.

14. If Delay and Executive 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 Delay's and/or Executive'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 Delay and/or Executive as allowed by law. If Delay and Executive do not request review by the Administrative Hearing Commission, then this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

6/5/12

Delisa D. Delay Date

LICENSEE

6.5.12

Executive, LLC Date

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director
Date: July 23, 2012

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