

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION**  
**AND**  
**OCTOPUS LLC**

Octopus LLC (Octopus LLC) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Octopus LLC's license as a real estate association, no. 2009029876, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> 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 and Octopus LLC jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Octopus LLC acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; 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 it at the

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

hearing; the right to present evidence on its 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 it; 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 Octopus LLC 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 it by law, Octopus LLC knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Octopus LLC acknowledges that it has 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. Octopus LLC stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Octopus LLC's license as a real estate association, license no. 2009029876, is subject to disciplinary action by the MREC in accordance with the relevant

provisions of Chapter 621, RSMo, and §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Octopus LLC in Part II herein is based only on the agreement set out in Part I herein. Octopus LLC understands that the MREC may take further disciplinary action against it 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 and Octopus LLC herein jointly stipulate to the following:

1. Octopus LLC is a Missouri limited liability company, charter no. LC0992180. At all relevant times herein, Octopus LLC was licensed with the MREC as a real estate association, license no. 2009029876. Octopus LLC does business under the fictitious names of Real Property Management Kansas City which is registered with the MREC and the Missouri Secretary of State.
2. Wesley D. Davis (Davis) holds a real estate broker associate license, no. 2011019183. At all times relevant herein, Davis' licenses were current and active. Davis served as the designated broker of Octopus LLC from June 22, 2011 until 2012.

3. Tim Frazier became the designated broker on September 24, 2012, and serves in that capacity as of the date of this agreement.

4. Peter Gerolymatos, an individual, is the sole member of Octopus LLC, and is not and has never been licensed as a real estate broker or salesperson. During the Audit Period, Gerolymatos supervised and conducted the real estate management business of Octopus LLC. Gerolymatos received commissions and/or other valuable consideration for his real estate management services provided through Octopus LLC.

5. From October 25, 2011 through December 6, 2011, the MREC conducted an audit and examination of Octopus LLC's business records and escrow accounts (Audit) for the period of October 2010 to October 2011 (Audit Period). The findings of fact and conclusions of law set forth hereinafter represent the findings of the Audit.

6. Davis failed to properly supervise and manage the real estate practice of Octopus LLC by being in the office only every couple of weeks, by allowing the unlicensed Gerolymatos to manage the real estate management affairs and retain sole control over the escrow accounts, and by failing to be familiar with the property management software, procedures and activities of Octopus LLC, in violation of 20 CSR 2250-8.020(1), which states:

(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.

7. From January 22, 2011 to June 22, 2011, Octopus LLC conducted real estate activity without a designated broker. During this time, there were nine management agreements and one lease agreement negotiated which were not signed by a broker or any other licensed representative of Octopus LLC, instead being signed by the owner, Gerolymatos, in violation of §§ 339.020 and 339.180.1, RSMo Supp. 2011.

8. During the audit period, Octopus LLC managed 144 properties for 71 owners. For ten of those properties, Octopus LLC failed to obtain and/or maintain current management agreements, in violation of § 339.780.2, RSMo Supp. 2011 and 20 CSR 2250-8.200(1).

9. According to the October 2011 owner's statements maintained by Octopus LLC, Octopus LLC should be holding rents and security deposits on behalf of its clients in an amount of \$63,429.14, but the reconciled bank statements for such period show a balance of \$13,462.56 leaving a shortage of \$49,966.56, in violation of § 339.105.1, RSMo Supp. 2011, which states:

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.

10. Based on the conduct of Octopus LLC, as stipulated to herein, cause exists to discipline the real estate association license of Octopus LLC pursuant to § 339.100.2(1), (7), (15), (16), (19), and (23), RSMo Supp. 2011, which states:

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;

.....

(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\*;

.....

(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\*;

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

.....

(19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence;

.....

(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\*.[.]

## **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. **Octopus's license is on probation.** Octopus's license as a Real Estate Association is hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Octopus shall be entitled to practice as a Real Estate Association under Chapter 339, RSMo, as amended, provided Octopus adheres to all the terms of this agreement.

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

A. Octopus LLC shall keep the MREC apprised at all times of its current address and telephone number at each place of business.

Octopus LLC shall notify the MREC in writing within ten (10) days of any change in this information.

B. Octopus LLC shall timely renew its real estate license, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain its license in a current and active status. During the disciplinary period, without violating the terms and conditions of this Settlement Agreement, Octopus LLC may surrender its real estate license by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Octopus LLC applies for a real estate license after surrender, Octopus LLC 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. Octopus LLC 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. Octopus LLC 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, Octopus LLC 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. Octopus LLC 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.

3. Upon the expiration of the disciplinary period, the license of Octopus shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Octopus 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 Octopus's license.

4. 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.

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

6. 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.

7. 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. Octopus agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

9. 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.

10. 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 620, RSMo, as amended.

11. Octopus, together with its partners, shareholders, officers, directors, 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.

12. Octopus understands that it 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

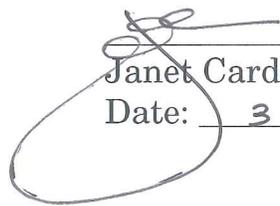
for disciplining Octopus's license. If Octopus desires the Administrative Hearing Commission to review this Settlement Agreement, Octopus may submit its request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

If Octopus requests 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 Octopus's license. If Octopus does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

RESPONDENT

MISSOURI REAL ESTATE  
COMMISSION

  
\_\_\_\_\_  
Tim Frazier, Registered Broker  
Date: Feb 25, 2013

  
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Janet Carder, Executive Director  
Date: 3-21-13

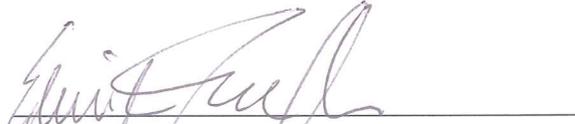
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