BEFORE THE
MISSOURI REAL ESTATE COMMISSION

In the matter of the application of	)
	)
SHAWN FOSTER	)
	)
Applicant	)

ORDER OF THE MISSOURI REAL ESTATE COMMISSION REGARDING ISSUANCE OF A PROBATED REAL ESTATE SALESPERSON LICENSE TO SHAWN FOSTER

The Missouri Real Estate Commission ("MREC") hereby issues its ORDER granting a PROBATED real estate salesperson license to Shawn Foster ("Foster") pursuant to the provisions of § 324.038, RSMo.[1] As set forth in § 324.038, RSMo, Foster may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the MREC's decision to issue a probated real estate salesperson license. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date of delivery or mailing by certified mail of this Order. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the MREC's decision shall be considered waived.

1 All statutory references are to the Revised Statutes of Missouri, as amended, unless otherwise specified.

I

FINDINGS OF FACT

Based upon the foregoing, the MREC hereby states:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of § 339.010 to 339.205 and § 339.710 to 339.860, RSMo, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. Shawn Foster is a natural person residing at the address of 4444 S. Cottage, Independence, Missouri, 64055.

3. On or about May 2, 2017, the MREC received Foster's application for a real estate salesperson license ("Application").

4. On his Application, question 4-13, Foster was asked if he had "been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution in this state, or any other state, or of the United States, whether or not sentence was imposed? **NOTE: This includes Suspended Imposition of Sentence, Suspended Execution of Sentence, and alcohol related offenses, i.e. DWI and BAC.**" Foster responded, "YES" to question 4-13. Foster disclosed a 2004 plea of guilty to possession of a controlled substance and a 2009 plea of guilty to possession of a firearm

5. On or about April 18, 2005, in Case No. 04CR205098-01, Foster pleaded guilty in the Circuit Court of Jackson County, Missouri, to two counts of the class C felony

of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana and the class A misdemeanor of Unlawful Use of Drug Paraphernalia.

6. On or about April 18, 2005, in Case No. 04CR205098-01 the Court suspended the imposition of sentence and placed Foster on three years' supervised probation. On March 17, 2006, the Court revoked Foster's probation, sentenced him to three years' incarceration but suspended the execution of sentence and placed Foster on five years' supervised probation. On or about October 20, 2006, the Court revoked Foster's probation and executed the three year incarceration sentence.

7. On or about March 17, 2006, in Case No. 0616-CR01747-01, Foster pleaded guilty in the Circuit Court of Jackson County, Missouri, to the class C felony of Possession of Controlled Substance Except 35 Grams Or Less of Marijuana.

8. On or about March 17, 2006, in Case No. 0616-CR01747-01 the Court sentenced Foster to five years' incarceration but suspended the execution of sentence and placed Foster on three years' supervised probation. On or about October 20, 2006, the Court revoked Foster's probation and executed the five year incarceration sentence.

9. On or about March 17, 2006, in Case No. 0616-CR00608-01, Foster pleaded guilty in the Circuit Court of Jackson County, Missouri, to the class C felony of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana.

10. On or about March 17, 2006, in Case No. 0616-CR00608-01, the Court sentenced Foster to five years' incarceration but suspended the execution of sentence and placed Foster on three years' supervised probation. On or about

October 20, 2006, the Court revoked Foster's probation and executed the five year incarceration sentence.

11. On or about March 17, 2006, in Case No. 0616-CR01749-01, Foster pleaded guilty in the Circuit Court of Jackson County, Missouri, to the class C felony of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana.

12. On or about March 17, 2006, in Case No. 0616-CR01749-01, the Court sentenced Foster to five years' incarceration but suspended the execution of sentence and placed Foster on three years' supervised probation. On or about October 20, 2006, the Court revoked Foster's probation and executed the five year incarceration sentence.

13. On or about October 20, 2006, in Case No. 0616-CR03332-01, Foster pleaded guilty in the Circuit Court of Jackson County, Missouri, to the class C felony of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana.

14. On or about October 20, 2006, in Case No. 0616-CR03332-01, the Court sentenced Foster to five years' incarceration in Missouri Department of Corrections.

15. On or about October 20, 2006, in Case No. 0616-CR03475-01, Foster pleaded guilty in the Circuit Court of Jackson County, Missouri, to the class C felony of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana.

16. On or about October 20, 2006, in Case No. 0616-CR03475-01, the Court sentenced Foster to five years' incarceration in Missouri Department of Corrections.

17. On or about August 3, 2009, in Case No. 09-00203-01-CR-W-GAF, Foster pleaded guilty in the United States District Court for the Western District of Missouri to the felony of Felon in Possession of a Firearm.

18. On or about August 3, 2009, in Case No. 09-00203-01-CR-W-GAF, the Court sentenced Foster to 55 months in federal prison. The Court released Foster after 36 months and placed him on supervised released from which he was released June 24, 2013.

19. The crimes of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana, Unlawful Use of Drug Paraphernalia and Felon in Possession of a Firearm are offenses of which an essential element is fraud, dishonesty or an act of violence and/or are crimes involving moral turpitude; and the commission of these crimes demonstrates a lack of regard for the health, safety, and welfare of the public.

20. The crimes of Possession of Controlled Substance Except 35 Grams Or Less Of Marijuana, Unlawful Use of Drug Paraphernalia and Felon in Possession of a Firearm are offenses reasonably related to the qualifications, functions, and duties of a real estate salesperson.

II

CONCLUSIONS OF LAW

21. As a result of the criminal conduct identified in Section I herein, and Foster's failure to disclose all his criminal convictions, cause exists for the MREC to deny Foster's application for a real estate salesperson license pursuant to § 339.080.1, RSMo, which provides: "The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100, ..."

22. As a result of the criminal conduct identified in Section I herein and Foster's failure to disclose all his criminal convictions, cause exists for the MREC to deny Foster's application for a real estate salesperson license pursuant to the provisions of § 339.100.2(16), (18) and (19), RSMo, which state:

> 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:
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> ...
>
> (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;
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> ...
>
> (18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;
>
> (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

23. Section 339.040.1, RSMo, provides that licenses shall be issued only to persons of good moral character who bear a good reputation for honesty, integrity, and fair dealing and who are competent to transact the business of a real estate salesperson in a manner so as to safeguard the public's interest.

24. As a result of the criminal conduct identified in Section I herein and his failure to disclose all criminal convictions, Foster has engaged in conduct and has pleaded guilty to crimes that adversely affect his moral character, his reputation, and his fitness and qualifications to practice as a real estate salesperson.

25. As an alternative to refusing to issue a license, the MREC may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1, RSMo, which provides:

> Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of license, the board, as an alternative to refusing to issue a license, may at its discretion, issue to an applicant a license subject to probation.

26. The MREC issues this Order in lieu of denial of Foster's application for a real estate salesperson license. The MREC has determined that this Order is necessary to ensure the protection of the public.

III

TERMS AND CONDITIONS

27. Based on the foregoing, the Missouri real estate salesperson license issued to Foster is subject to the following terms and conditions.

28. **Foster's license is on probation for five (5) years.** Foster's real estate salesperson license is hereby placed on PROBATION for a period of FIVE (5) YEARS from the effective date of this Order. During the period of probation on his real estate salesperson license, Foster shall be entitled to practice as a real estate

salesperson provided he adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

A. If at any time during the disciplinary period Foster 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 his license. Foster must obtain the Broker Acknowledgement form from the MREC.

B. Foster shall keep the MREC apprised at all times in writing of his current address and telephone number at each place of residence and business. Foster shall notify the MREC in writing within ten days of any change in this information.

C. Foster shall timely renew his Missouri real estate salesperson license, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain his license in a current and active state. During the disciplinary period, Foster shall not place his license on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Probated License Order, Foster may surrender his real estate license by submitting a letter to the MREC. If Foster applies for a real estate license after surrender, Foster 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 Probated License Order.

D. Foster shall meet in person with the MREC or its representative at any such time and 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. Foster shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

F. During the probationary period, Foster shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Order.

G. Foster shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

H. Foster shall report to the MREC each occurrence of Foster's being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

30. Upon the expiration and successful completion of the disciplinary period, Foster shall be entitled to an unencumbered real estate salesperson license if all other requirements of the law have been satisfied; provided, however, that in the event

the MREC determines that Foster has violated any term or condition of this Order, 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 Foster's real estate salesperson license.

31. No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the MREC in accordance with the provisions of Chapter 536, RSMo.

32. If the MREC determines that Foster has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

33. If any alleged violation of this Order occurs during the disciplinary period, 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. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

34. The MREC will maintain this Order as an open and public record of the MREC as provided in Chapters 339, 610 and 324, RSMo.

SO ORDERED AND EFFECTIVE THIS __29th__ DAY OF __AUGUST__ 2017.

Terry W. Moore, Executive Director
Missouri Real Estate Commission