

**SETTLEMENT AGREEMENT BETWEEN**  
**MISSOURI REAL ESTATE COMMISSION AND KEY REALTY GROUP LLC**  
**AND JOHN N. WHEELER**

Come now Key Realty Group, LLC, d/b/a Prime Realty Group, LLC, ("Key Realty") and John N. Wheeler ("Wheeler") (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this Settlement Agreement for the purpose of resolving the question of whether Key Realty's license as a real estate association and Wheeler's license as a real estate broker associate will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensees' licenses, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo.

Licensees Key Realty and Wheeler 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 against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, Key Realty and Wheeler 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.

Key Realty and Wheeler acknowledge that they have received a copy of the documents relied upon by the Commission in determining there was cause to discipline their licenses, along with citations to law and/or regulations the Commission believes were violated.

For the purpose of settling this dispute, Key Realty and Wheeler stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the Commission that their licenses,

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

numbered 2017017149 (Key Realty) and 2015001717 (Wheeler), are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo, for the purpose of licensing all persons engaged in the practice as a real estate broker or salesperson in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.010-339.205 and 339.710-339.855, RSMo.

2. Licensee, Key Realty, holds a real estate association license from the Commission, license number 2017017149. The Commission issued Key Realty's license on May 16, 2017 and it expires June 30, 2020. Licensee's license was current and active at all relevant times herein. Licensee John N. Wheeler is the designated broker for Key Realty.

3. Licensee, John N. Wheeler, holds a broker associate license from the Commission, license number 2015001717. The Commission issued Wheeler's broker associate license on May 16, 2017. Licensee's license expires June 30, 2020. Licensee Wheeler's license was current and active at all relevant times herein.

4. On December 12-15 and 18-20, 2017 and January 8, 2018, the Commission conducted an audit of Licensees' real estate activity. The Commission's audit revealed:

- a. In violation of section 339.100.2(3), on two instances, Licensee Wheeler failed to remit monies that belonged to others, specifically property owners for whom Licensee had ceased managing properties but was still holding funds as of the audit cut-off date.
- b. In violation of section 339.100.2(19), RSMo, Licensee Wheeler had improper business dealings in that the brokerage took a fee consisting of 10% of all repair bills which was not disclosed as a brokerage fee on the owner statements nor authorized in the management agreements.
- c. In violation of section 339.100.2(19), RSMo, Licensees engaged in untrustworthy and fraudulent business dealings. Commission examiners noted that numerous management agreements appeared to contain owner signature very similar to those of other owners. Examiners also noted that certain multiple management agreements for the same owners and

sales contracts and/or closing documents for the same owners had signatures that differed substantially from one another. Licensee Wheeler gave the examiners authority to contact owners and of the 20 owners contacted, eight responded and five of those stated that the signatures on the agreement was not their valid signature. Salesperson Danielle Fernandez informed the Commission that when the owners did not return a signed management agreement before the audit, she signed the owner's names. She stated she did not believe Licensee Wheeler, her broker, or anyone else was aware that she'd done that.

- d. In violation of section 339.105.1, RSMo, there was an unidentified overage of \$4,604.13 in the security management escrow account, Enterprise Bank & Trust account ending 3838 ("Account 3838").
- e. In violation of section 339.105.1, RSMo, there was a net shortage of \$1,598.73 in the property management escrow account, Enterprise Bank & Trust account ending 3846 ("Account 3846") which is partially identified as:
  - i. Identified overages of \$359.39, the balance on property no longer managed for owner B; \$17.14, the balance on property no longer managed for owner A.P.;
  - ii. Identified shortages of \$795.71 for October fees taken without authorization; and \$680.36 also for October fees taken without authorization; and
  - iii. A net unidentified shortage of \$499.19.
- f. In violation of section 339.730.1(1), RSMo, Licensee failed to perform the terms of the written agreement with the seller in that he advertised the property for a price difference than the list price.
- g. In violation of section 339.730.1(1), RSMo, Licensee failed to perform all of the terms of the written agreement with the owner in that he took incorrect management fees.
- h. In violation of section 339.780.2, RSMo, Licensee acted as an agent of the seller without a currently effective written agency agreement on two instances.
- i. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(B), on 18 instances, the management agreement did not state the amount of all the fees or commissions to be paid.

- j. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(B), on nine instances, the management agreement did not state when the fees or commissions would be paid.
- k. In violation of regulation 20 CSR 2250-8.090(9)(C), on 18 instances, the management agreement did not specify whether security deposits and prepaid rents would be held by the broker or the owner.
- l. In violation of regulation 20 CSR 2250-8.090(9)(I), the management agreement did not include a statement that permits or prohibits the designated licensee from acting as a transaction broker.
- m. In violation of regulation 20 CSR 2250-8.096(1), the written brokerage relationship disclosure was signed by the seller after the signing of the offer to purchase.
- n. In violation of regulation 20 CSR 2250-8.096(1)(A)2, the written brokerage relationship disclosure did not correctly identify the source or sources of compensation.
- o. In violation of regulation 20 CSR 2250-8.096(1)(A)6, the written brokerage relationship disclosure was not signed by the disclosing licensee on or before the contract date.
- p. In violation of regulation 20 CSR 2250-8.100(1), all terms and conditions were not specified in the offer to purchase in that the interest rate was not included.
- q. In violation of regulation 20 CSR 2250-8.100(3), a change on the contract was not initialed by the buyer and the seller.
- r. In violation of regulation 20 CSR 2250-8.150(2), the broker failed to verify the accuracy of the closing statement in that it was not signed by the buyer and the seller.
- s. In violation of 20 CSR 2250-8.150(3) and 20 CSR 2250-8.160(1), on five instances, the broker failed to retain records including:
  - i. In one instance, the seller's disclosure statement and earnest money receipt;
  - ii. In one instance, the earnest money receipt, lender approval letter, and franchise disclosure;
  - iii. In one instance, the seller's disclosure, lead-based paint disclosure, selling franchise disclosure and pre-approval letter;

- iv. In one instance the pre-approval letter and written inspection report; and
  - v. In one instance, the lead based paint addendum.
- t. In violation of regulation 20 CSR 2250-8.160(2), Licensee failed to retain records on 12 instances including 10 voided checks, and two instances of missing pages from the management agreement.
  - u. In violation of regulation 20 CSR 2250-8.220(1), Licensee disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.
  - v. In violation of regulation 20 CSR 2250-8.220(6), all management fees were not removed monthly.
5. Section 339.105, RSMo, states, in relevant 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.
6. Section 339.730.1(1), RSMo, states, in relevant part:
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:
    - (1) To perform the terms of the written agreement made with the client[.]
7. Section 339.780, RSMo, states, in relevant 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.
8. Regulation 20 CSR 2250-8.090 states, in relevant part:

...

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

...

(B) State the amount of fee or commission to be paid and when the fee or commission will be paid.

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

...

(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[.]

9. Regulation 20 CSR 2250-8.096 states, in relevant part:

(1) Licensees acting with or without a written agreement for brokerage services pursuant to sections 339.710 to 339.860, RSMo, are required to have such relationships confirmed in writing by each party to the real estate transaction on or before such party's first signature to the real estate contract. Nothing contained herein prohibits the written confirmation of brokerage relationships from being included or incorporated into the real estate contract, provided that any addendum or incorporated document containing the written confirmation must include a separate signature section for acknowledging the written confirmation that shall be signed and dated by each party to the real estate transaction.

(A) Written confirmation must –

...

2. Identify the source or sources of compensation;

...

6. Be signed and dated by the disclosing licensees on or before the contract date. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the unlicensed office personnel may, in the performance of the duties enumerated in 339.010.5(5)(a)-(e), sign the written confirmation on behalf of the landlord's agent or transaction broker.

10. Regulation 20 CSR 2250-8.100 states, in relevant part:

(1) Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms.

Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.

...

(3) Any change to a contract shall be initialed by all buyers and sellers. Acceptance of each fully executed contract shall include the date at which final agreement was reached either by 1) specific acknowledgement of final acceptance date; or 2) date of the last signature or initial to the contract.

11. Regulation 20 CSR 2250-8.150 states, in relevant part:

(1) A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain each broker's responsibility to require closing statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. The detailed closing statement shall contain all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all monies received by the broker, closing agent or company in the transaction, the amount, and payee(s) of all disbursements made by the broker, closing agency or company and the signatures of the buyer and seller.

(2) The brokers for the buyer and the seller shall retain legible copies of both buyer's and seller's signed closing statements.

12. Regulation 20 CSR 2250-8.160 states, in relevant part:

(1) Every broker shall retain for a period of at least three (3) years true copies of all business books; accounts, including voided checks; records; contracts; brokerage relationship agreements; closing statements and correspondence relating to each real estate transaction that the broker has handled. The records shall be made available for inspection by the commission and its authorized agents at all times during usual business hours at the broker's regular place of business. No broker shall charge a separate fee relating to retention of records.

(2) Every broker shall retain for a period of at least three (3) years true copies of all property management agreements, correspondence or other written authorization relating to each real estate transaction relating to leases, rentals or management activities the broker has handled. The broker must also retain all business books, accounts and records unless these records are released to the owner(s) or transferred to another broker by written detailed receipt or transmittal letter agreed to in writing by all parties to the transaction.

13. Regulation 20 CSR 2250-8.220 states, in relevant part:

(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.

...

(6) Fees or commissions payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agreed in writing. Any rent paid in advance as a deposit for the last month's rent or as rent other than the current month's rent held by a broker shall be deposited in the property management escrow account unless otherwise agreed to in writing.

14. Licensees' conduct, as described in paragraph 4 above, constitutes cause to discipline Licensees' licenses.

15. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(3), (15), (16) and (19), RSMo, which states 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, 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:

...

(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 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[.]

#### Joint Agreed Disciplinary Order

16. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Commission in this matter under the authority of §§ 536.060, 621.045.4 and 621.110, RSMo.

17. The terms of discipline shall include **Licensees' licenses shall be placed on probation for a period of four (4) years.** Licensees' licenses are hereby placed on four (4) years' probation. During the period of **probation** on their licenses, Licensees shall be entitled to practice as a real estate association and real estate broker associate provided they adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

**Specific Requirement:**

- a. During the disciplinary period, Licensee shall provide written documentation to the Commission demonstrating that all overages and shortages identified in the audit as identified in paragraph 4 above, have been corrected.
- b. Licensees shall be subject to a Commission directed re-audit within the first year of probation.

**General Requirements:**

- a. Licensees shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each place of residence and business. Licensees shall notify the MREC in writing within ten days of any change in this information.
- b. Licensees shall timely renew Licensee Wheeler's licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a Surrender of Licensure Rights form to the MREC along with the original license and any duplicate copies issued to Licensees. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants. Licensees would have to apply as an original applicant for a salesperson license. 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. Licensees 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.

d. Licensees shall immediately submit documents showing compliance with the requirements of this Order to the MREC when requested by the MREC or its designee.

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

f. Licensees 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.

g. Licensees shall report to the MREC each occurrence of Licensees' 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.

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

20. This Agreement does not bind the Commission or restrict the remedies available to it concerning any future violations by Licensee of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms of this Agreement.

21. All parties agree to pay all their own fees and expenses incurred as a result of this case, its settlement or any litigation.

22. The parties to this Agreement understand that the Missouri Real Estate Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

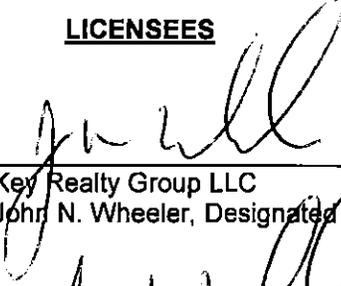
23. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

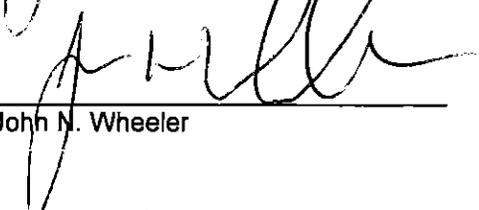
24. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof to be void or unenforceable.

25. If no contested case has been filed against Licensees, Licensees have the right, either at the time the Settlement Agreement is signed by all parties or within fifteen days thereafter, to submit the Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the Settlement Agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, P.O. Box 1557, United States Post Office Building, 131 West High St., Jefferson City, MO 65102.**

26. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensees' licenses. Effective the date the Administrative Hearing Commission determines that the Agreement sets forth cause for disciplining Licensees' licenses, the agreed upon discipline set forth herein shall go into effect. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the Commission may proceed to seek discipline against Licensees as allowed by law. If the Licensees do not submit the Agreement to the Administrative Hearing Commission for determination, the Agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

**LICENSEES**

  
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Key Realty Group LLC  
John N. Wheeler, Designated Broker

  
\_\_\_\_\_  
John N. Wheeler

Date 2/1/19

**COMMISSION**

  
\_\_\_\_\_  
Terry W. Moore  
Executive Director  
Missouri Real Estate Commission

Date 03-25-19