BEFORE THE
MISSOURI REAL ESTATE COMMISSION
STATE OF MISSOURI

MISSOURI REAL ESTATE COMMISSION, Petitioner, v. R. SCOTT MCADAMS PREFERRED PROPERTIES OF BRANSON LLC BRANSON PREMIERE PRPERTY MANAGEMENT LLC Respondents.	))))))))))	Case No. 15-1575 RE PV

AMENDMENT TO DISCIPLINARY ORDER OF R. SCOTT McADAMS, PREFERRED PROPERTIES OF BRANSON, LLC. AND BRANSON PREMIERE PROPERTY MANAGEMENT, LLC

Comes now R. Scott McAdams, Preferred Properties of Branson, LLC, and Branson Premiere Property Management, LLC, (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this Amendment to the Disciplinary Order of R. Scott McAdams, Preferred Properties of Branson, LLC, and Branson Premiere Property Management, LLC for the purpose of modifying the original Disciplinary Order at the request of the Licensees.

Effective March 13, 2019, the Commission issued a ten page Disciplinary Order that included Findings of Facts, Conclusions of Law, and specifications of the Disciplinary Order of R. Scott McAdams, Preferred Properties of Branson, LLC, and Branson Premiere Property Management, LLC. That order place R. Scott McAdams' licenses (2005010604 & 2008037718), Preferred Properties of Branson, LLC's license (2005006108/), and Branson Premiere Property Management , LLC's license (2007012579) on probation for three years. Numerous other stipulations were issued in the Order, to include requiring Mr. McAdams to hire a CPA to conduct quarterly three-way reconciliation audits and submit the reports to the Commission for a period of 18-months. On March 29, 2019, Mr. McAdams wrote an e-mail to the Commission asking for permission to hire an Accountant/Bookkeeper instead of a CPA because of the cost to hire a CPA. Therefore, he was asking that the Disciplinary Order be amended. At the April 3, 2019 Commission Meeting the Commission approved Mr. McAdams' request.

The Terms and conditions of the disciplinary period, Page 8, Item A, of the Disciplinary Order, shall be amended to shall read "Respondents shall, at their expense, retain an approved CPA/Accountant/Bookkeeper to

conduct and complete the quarterly audit reports for a 12-month period. Respondents shall, within fifteen (15) calendar days of the effective date of this Order submit to the Commission office in writing a list of at least three CPAs, Accountants, or Bookkeepers (or a combination thereof), including name, address, and any relationship to Respondents. The Commission may approve one or more of the listed CPAs, Accountants, or Bookkeepers or may require the Respondents, on grounds that are reasonable, to submit additional names for consideration and approval. The first such quarterly audit report shall begin with the quarter ending June 30, 2019 (for the months of April, May, and June 2019) shall be due on or before October 30, 2019. The second quarterly report ending September 30, 2019 (for the months of July, August, and September 2019) shall be due on or before November 30, 2019. The third quarterly report ending December 31, 2019 (for the months of October, November, and December 2019) shall be due on or before January 30, 2020. The fourth (and final) quarterly report ending March 31, 2020 (for the months of January, February, and March 2020) shall be due on or before April 30, 2020. Further, the CPA/Accountant/ Bookkeeper shall mail to the Commission office by certified mail, return receipt requested, a signed statement from the CPA/Accountant/Bookkeeper confirming that his/her firm completed a three-way reconciliation of the escrow account(s) and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to provide the reconciliation must be submitted with the CPA/Accountant/Bookkeeper statement. If the CPA/Accountant/Bookkeeper finds that the three-way reconciliation does not match, the report must include the details and documentation.

All other terms and conditions of the March 13, 2019 Disciplinary Order shall remain in effect unless expressly modified in writing and signed by Licensees and the Commission.

LICENSEES

R. Scott McAdams
Preferred Properties of Branson LLC
Branson Premiere Property Management LLC

Date 6/19/20

COMMISSION

Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date JUNE 19, 2020

BEFORE THE
MISSOURI REAL ESTATE COMMISSION
STATE OF MISSOURI

MISSOURI REAL ESTATE COMMISSION,	)	
	)	
Petitioner,	)	
	)	
v.	)	**Case No. 15-1575 RE PV**
	)	
R. SCOTT MCADAMS	)	
PREFERRED PROPERTIES OF BRANSON LLC	)	
BRANSON PREMIERE PROPERTY MANAGEMENT LLC	)	
Respondents.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

Pursuant to notice the Missouri Real Estate Commission ("Commission") held a hearing on February 6, 2019, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondents had violated the probationary terms of a prior Commission settlement agreement and if so, whether additional discipline of Respondents' licenses was warranted. All of the members of the Commission were present throughout the meeting. The Commission was represented by Assistant Attorney General Richard Groeneman. On behalf of the Commission, counsel offered the testimony of Terry W. Moore, Executive Director and Jeffrey Niemeyer, Examiner Field Supervisor and offered 13 exhibits which were admitted into the record. Respondents were properly and timely notified of the hearing. Respondent R. Scott McAdams, (McAdams) appeared in person with legal counsel, John Landwehr. Respondents Preferred Properties of Branson, LLC (Preferred Properties) and Branson Premiere Property Management, LLC (Branson Premiere) also appeared through legal counsel, John Landwehr. After being present and considering all of the evidence

presented during the hearing, the Commission issues these following Findings of Facts, Conclusions of Law and Disciplinary Order.

I.

FINDINGS OF FACT

1. The Missouri Real Estate Commission is an agency of the state of Missouri created and established pursuant to § 339.120, RSMo.,[1] for the purpose of carrying out and enforcing the provisions of §§ 339.010 to 339.205 and 339.710 to 339.855, RSMo., and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. R. Scott McAdams holds broker associate licenses from the Commission, license numbers 2005010640 and 2008037718. McAdams' broker associate licenses were current at all times relevant to this proceeding. Respondent Preferred Properties of Branson, LLC holds a real estate association license, number 2005006108. Preferred Properties' real estate association license was current at all times relevant to this proceeding. Respondent Branson Premiere Property Management, LLC holds a real estate association license, number 2007012579. Branson Premiere's real estate association license was current at all times relevant to this proceeding.

3. On May 30, 2014, the Commission and Respondents entered into a Settlement Agreement placing McAdams' broker associate licenses and Preferred Properties and Branson Premiere's real estate association licenses on five (5) years' probation. The Settlement Agreement required Respondents to 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.

4. The relevant terms of the disciplinary period as stated in the Settlement Agreement's Joint Agreed Disciplinary Order were:

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

a. Paragraph G: Branson Premiere, Preferred Properties and McAdams shall comply with all relevant provisions of Chapter 339, RSMop, 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. Any cause to discipline Branson Premiere, Preferred Properties, and McAdams' licenses as a real estate association and broker under §339.532.2, RSMo., as amended, that accures during the disiciplinary period shall also constitute a violation of this Settlement Agreement

5. On or about February 29, 2016 through March 17, 2016, the Commission conducted a probationary audit of Respondents. The Commission's probationary audit revealed that Respondent McAdams failed to remit funds collected on behalf of owners, upon the property owner terminating McAdams management of the property, and that he did not have written authorization to hold funds for the owners which is a violation of Section 339.100.2(3), RSMo., which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and the Settlement Agreement.

6. The Commission's audit also revealed Respondent McAdams failed to perform the terms of the written management agreement with landlords G.O. and T.O. by failing to deposit rent and owner funds into a property management escrow account for properties located at 710, 716, 730 and 736 Parkview Drive in violation of Sections 339.100.2(3) and (15) RSMo., which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and paragraph 41(G) of the Settlement Agreement.

7. The Commission's audit also revealed Respondent McAdams failed to perform the terms of the written management agreement with landlords G.O. and T.O. by failing to deposit security deposits, and other deposits, into a property management escrow account, and instead allowed the owners of the property to hold the security deposit instead of Respondent McAdams in violation of Sections 339.100.2(1) and (15), RSMo., and 20 CSR 2250-8.220(2), which

provides cause to further discipline Respondents' licenses under Section 324.042, RSMo, and paragraph 41(G) of the Settlement Agreement.

8. The Commission's audit also revealed that Respondent McAdams disbursed funds from a property management escrow account with Regions Bank, account number XXXXX9743, when the owners balance was not sufficient to cover the disbursements, for property located at 2508 W. Barton Road and disbursed to owner N.D. and to Respondent McAdams for operating expense in violation of Sections 339.100.2(1) and (15), RSMo., and 20 CSR 2250-8.220(1), which provides cause to further discipline Respondents' licenses under Section 324.042, RSMo and paragraph 41(G) of the Settlement Agreement.

9. The Commission's audit also revealed that Respondent McAdams failed to notify the Commission when a property management escrow or trust account closed, failed to register with the Commission a new property management escrow or trust account, and failed to notify the Commission of the opening or closing of a registered account within ten (10) days which is a violation of §§339.100.2(15), 339.105.2, RSMo., and 20 CSR 2250-8.220(7), which provides cause to further discipline Respondents' licenses under Section 324.042, RSMo., and paragraph 41(G) of the Settlement Agreement.

10. The Commission's audit also revealed that Respondent McAdams maintained personal funds in the property management escrow accounts with the Central Bank of Branson and due to the commingling of personal and business funds, caused a temporary overage in those accounts which is in violation of §§339.100.2(15) and 339.105.1, RSMo,, which provides cause to further discipline Respondents' licenses under Section 324.042, RSMo,, and paragraph 41(G) of the Settlement Agreement.

11. The Commission's audit also revealed that Respondent McAdams made payments related to an owner's property when the amount of the owner funds held in the account was not sufficient to cover the disbursement in violation of §§339.100.2(1) and (15) RSMo., and 20 CSR

2250-8.220(1), which provides cause to further discipline Respondents' licenses under Section 324.042, RSMo., and paragraph 41(G) of the Settlement Agreement.

12. The Commission's audit also revealed that Respondent McAdams failed to withdraw monthly interest from the property management escrow account held by Central Bank of Branson, Account No. XXXX9445, in violation of §§339.100.2(15), and 339.105.1 RSMo., and 20 CSR 2250-8.220(6), which provides cause to further discipline Respondents' licenses under Section 324.042, RSMo., and paragraph 41(G) of the Settlement Agreement.

13. Respondents individually and collectively, as alleged in each count of the Complaint, demonstrated that they lack good moral character, do not bear a good reputation for honesty, integrity and fair dealing and 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 Commission to refuse to issue a license under §339.040.1, RSMo., providing cause to discipline the real estate licenses of Respondents pursuant to the Settlement Agreement and §§324.042 and 339.100.2, RSMo.

14. Respondents conduct individually and collectively as alleged in each count of the Complaint, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross negligence providing cause to discipline the Respondents' real estate licenses of pursuant to the Settlement Agreement and §§324.042 and 339.100.2(19) RSMo.

15. As a result of the foregoing, a Probation Violation Complaint was filed with the Missouri Real Estate Commission alleging that grounds existed for additional disciplinary action against R. Scott McAdams', Preferred Properties of Branson, LLC's and Branson Premiere Property Management LLC's Missouri real estate licenses, pursuant to § 324.042, RSMo.

16. The Commission set this matter for hearing and served notice of this disciplinary hearing upon Respondents in a proper and timely fashion.

17. On February 6, 2018, pursuant to notice and § 621.110, RSMo., this Commission held a hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether the Respondents had violated any terms of the Order, and if so, whether any additional discipline would be imposed against Respondents' licenses. Respondent R. Scott McAdams appeared in person with legal counsel, John Landwehr. Respondents Preferred Properties of Branson, LLC and Branson Premiere Property Management, LLC appeared through legal counsel, John Landwehr. Petitioner was represented by Richard Groeneman, Assistant Attorney General, who presented evidence and testimony as stated on page 1 of this Order.

18. All the members of the Commission were present throughout the disciplinary hearing.

II.

CONCLUSIONS OF LAW

19. R. Scott McAdams', Preferred Properties of Branson, LLC's and Branson Premiere Property Management LLC's failure to adhere to the terms of probation by failing to remit funds collected on behalf of owners, failing to perform the terms of a written agreement, failing to deposit security deposits into an escrow account, disbursing funds from property management escrow account when owners balance was not sufficient to cover the disbursement, failing to notify the Commission concerning opening and closing of property management escrow accounts, commingling funds in property management escrow accounts which caused temporary overages, and failing to withdraw monthly interest from escrow accounts in violation of Paragraph 41 G of the Settlement Agreement are violations of the terms of the Settlement Agreement which provides cause to further discipline R. Scott McAdams', Preferred Properties

of Branson, LLC's and Branson Premiere Property Management LLC's licenses under § 324.042, RSMo.

20. Pursuant to § 324.042, RSMo., the Commission has authority to impose additional discipline against R. Scott McAdams, Preferred Properties of Branson, LLC and Branson Premiere Property Management LLC, for violating any disciplinary terms previously imposed or agreed to pursuant to the Settlement Agreement with the licensee.

21. Section 324.042, RSMo., provides:

> Any board, commission or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission or committee may impose as additional discipline, any discipline it would be authorized to impose in an initial disciplinary hearing.

22. Pursuant to Section 324.042, RSMo., the Commission has jurisdiction to hold additional hearings and impose discipline if it finds that a licensee has violated any disciplinary terms previously imposed by the Commission.

23. Section 339.100.3, RSMo., provides the Commission may discipline a real estate license after an initial disciplinary hearing by revoking, probating or suspending said license.

24. The Commission finds Respondents R. Scott McAdams, Preferred Properties of Branson, LLC and Branson Premiere Property Management LLC have violated the terms and conditions of the Settlement Agreement that became effective May 30, 2014 as a result of the conduct identified in the Findings of Facts set forth above.

25. The Commission has determined that this Order is necessary to ensure the protection of the public.

III.

ORDER

Therefore, having fully considered all the evidence before the Commission, it is the ORDER of this Commission that:

26. The real estate license of Respondent R. Scott McAdams, license numbers 2005010604 and 2008037718, Preferred Properties of Branson, LLC, license number 2005006108, and Branson Premiere Property Management LLC, license number 2007012579, are hereby **placed on an ADDITIONAL THREE (3) YEARS PROBATION.** During Respondents' probation, Respondents shall be entitled to practice under their respective license provided that Respondents adhere to all of the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

A. Respondents shall, at their expense, retain an approved CPA to conduct and complete the quarterly audit reports for an 18 month period. Respondents shall, within fifteen (15) calendar days of the effective date of this Order submit to the Commission office in writing a list of at least three CPAs, including name, address, and any relationship to Respondents. The Commission may approve one or more the listed CPAs or may require Respondents, on ground that are reasonable, to submit additional names for consideration and approval. The first such quarterly audit report shall begin with the quarter ending June 30, 2019 and continue through and conclude with the quarter ending June 30, 2021. Further, within 30 days of completion of each quarterly audit report, the CPA conducting and completing the audit report will mail to the Commission office by certified mail, return receipt requested, a signed statement from the CPA confirming that his/her firm completed a reconciliation of the accounts and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to provide the reconciliation should be submitted with the

CPA's statement. If the CPA should find that the three-way reconciliation does not match, the CPA report should include the details and documentation.

B. Respondents shall keep the MREC apprised at all times, in writing, of Respondents' current addresses and telephone numbers at each place of residence and business. Respondents shall notify the MREC within ten (10) days of any change in this information.

C. Respondents shall timely renew their real estate licenses, timely pay all fees required for license renewal and shall comply with all requirements necessary to maintain their licenses in a current and active status. During the disciplinary period, Respondents shall not place their real estate licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of the Order, Respondents may surrender their real estate licenses by submitting a Surrender of Licensure Rights and Privileges form to the Commission and complying with 20 CSR 2250-8.155. If Respondents apply for a real estate license after surrender, Respondents shall be required to requalify as if an original applicant and the Commission will not be precluded from basing its decision, wholly or partially, on the findings of facts, conclusions of law and discipline set forth in this Order.

D. Respondents shall be prohibited from obtaining any additional real estate license(s) from the Commission without the prior written approval of the Commission. Respondents shall request permission to obtain additional license(s) in writing.

E. Respondents shall meet in person with the Commission or its representative any such time or place as required by the Commission or its designee upon notification from the Commission or its designee. Said meetings will be at the Commission's discretion and may occur periodically during the probation period.

F. Respondents shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested by the Commission or its designee.

G. During the probationary period, Respondents shall accept and comply with unannounced visits from the Commission's representative to monitor compliance with the terms and conditions of this Order.

H. Respondents shall comply with all relevant provisions of Chapter 339, RSMo., as amended; all rules and regulations duly promulgated under 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. Any cause to discipline Respondents licenses as a broker associate and real estate associations under § 339.100.2, RSMo., as amended, that accrues during the disciplinary period shall constitute a violation of this Order.

I. Upon the expiration and successful completion of the disciplinary period, Respondents' respective real estate broker associate license and real estate association licenses shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondents have 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 Respondents' real estate broker associate licenses and real estate association licenses.

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

So Ordered this 13TH **day of** MARCH **2019.**

Terry Moore

Terry W. Moore, Executive Director
Missouri Real Estate Commission

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BEFORE THE
MISSOURI REAL ESTATE COMMISSION

MISSOURI REAL ESTATE COMMISSION 3605 Missouri Boulevard P.O. Box 1339 Jefferson City, MO 65102 Petitioner,	)	
v.	)	No. _____
PREFERRED PROPERTIES OF BRANSON, LLC 2299 SO Bus. Hwy 65 Hollister, MO 65673 AND BRANSON PREMIERE PROPERTY MANAGEMENT, LLC 2299 SO Bus. Hwy 65 Hollister, MO 65673 AND R. SCOTT MCADAMS P.O. Box 1112 Branson, MO 65615 Respondent.	)	

PROBATION VIOLATION COMPLAINT

Petitioner, Missouri Real Estate Commission ("MREC"), by and through its attorney, the Attorney General of Missouri, states its cause of action against R. Scott McAdams ("McAdams"); Preferred Properties of Branson, LLC

("Preferred Properties"); and Branson Premiere Property Management, LLC ("Branson Premiere"):

1. MREC was established pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo, (as amended), relating to real estate salespersons and brokers.

2. Branson Premiere is licensed as a Real Estate Association, license number 2007012579. At all times relevant herein, Branson Premiere's real estate license was current and active.

3. Branson Premiere Property Management, LLC is a Missouri limited liability company, charter number LC0678010.

4. Preferred Properties is licensed as a Real Estate Association, license number 2005006108. At all times relevant herein, Preferred Properties real estate license was current and active.

5. Preferred Properties of Branson, LLC is a Missouri limited liability company, charter number LC0637013.

6. McAdams is licensed as a Real Estate Broker Associate, license number(s) 2008037718 and 2005010604. At all times relevant herein, McAdams' real estate licenses were current and active.

7. At all times relevant herein, McAdams was the designated broker for Branson Premiere and Preferred Properties, and, as such, bears responsibility

for his own conduct as well as that of Branson Premiere and Preferred Properties and their affiliates.

8. McAdams' real estate licenses are culpable for the conduct and violations revealed by MREC's audits of both Branson Premiere and Preferred Properties and their affiliates.

9. References herein to McAdams are also references to Branson Premiere and Preferred Properties.

10. References to Branson Premiere and Preferred Properties are also references to McAdams.

11. On or about May 7, 2014, R Scott McAdams, Preferred Properties of Branson, LLC, Branson Premiere Property Management, LLC and the Missouri Real Estate Commission ("MREC") entered into a settlement agreement concerning violations of §339 RSMo, and the Rules and Regulations of MREC, set forth in Rule 20 CSR 2250-8. A true and accurate copy of the Settlement Agreement is attached to this Probation Violation Complaint as Exhibit 1 and is incorporated as if fully stated herein.

12. In the Settlement Agreement, MREC placed McAdam's real Estate Broker Associate License and the Real Estate Association Licenses of Preferred Properties and Branson Premiere, on probation for a period of 5 years, beginning on May 7. 2014.

13. MREC has jurisdiction over this matter pursuant to §324.042, RSMo Supp. 2012, and page 23-24, paragraph 46 of the Settlement Agreement, which provides, in pertinent part: "MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred."

14. Section 324.042, RSMo provides

> Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

15. The Settlement Agreement further provides on page(s) 23-24, paragraph 46, in pertinent part:

> "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. Branson Premiere, Preferred Properties, and McAdams agree and stipulate that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred."

16. Section 339.040.1, RSMo, states in pertinent part:

> 1. Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers,

associates, general partners, or members who actively participate in such entity's brokerage, broker salesperson, or salesperson business 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 manner as to safeguard the interest of the public.

17. Section 339.100.2 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, 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:

. . . . .

(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 if 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;

. . . . .

(3) Failing within a reasonable time to account for or to remit any moneys, valuable documents or other property, coming into his or her possession, which belongs to others.

. . . . .

(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[.]

18. Section 339.105, RSMo, 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.

. . . . .

(2) Each broker shall notify the commission of his or her intent not to maintain as escrow account, or the name of the financial institution in which each escrow

or trust account is maintained, the name and number of each such account, and shall file written authorization directed to each financial institution to allow the commission or its authorized representative to examine each such account; such notification and authorization shall be submitted on forms provided therefor by the commission. A broker shall notify commission within ten business days of any change of his or her intent to maintain an escrow account, the financial institution, account numbers, or change in account status.

19. Section 339.730, 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:

. . . . .

(1) To perform the terms of the written agreement made with the client.

20. 20 CSR 2250-8.220 provides in pertinent 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.

. . . . .

(2) All security deposits held by a broker shall be maintained, intact, in an escrow account other that the property management account(s), pursuant to Section

> 339.105 RSMo, unless the owner(s) have agreed otherwise in writing.
>
> . . . . .
>
> (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.
>
> . . . . .
>
> (7) In addition to the notification required by section 339.105.2, RSMo, each broker, upon the request of the commission or its agent, shall consent to the examination and audit of the brokers property management escrow account(s) by the commission or its agents. As part of the consent, each broker shall execute a form presented to him/her by the commission or its agent entitled consent to Examine and Audit Escrow or Trust Account.

21. The disciplinary periods of McAdams, Preferred Properties, and Branson Premiere's real estate licenses expire on 05/30/2019.

22. The terms of the disciplinary period are stated on page 22 Paragraph 41(G) of the Settlement Agreement, and states in pertinent part:

> "Branson Premiere, Preferred Properties, and McAdams 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. Any cause to discipline

> Branson Premiere, Preferred Properties, and McAdam's licenses as a real estate association and Broker under §339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of the Settlement Agreement."

23. On or about February 29, 2016 and March 1-3, 8-9, & 14-17, 2016, MREC conducted a Probationary Audit of Preferred Properties of Branson, LLC #DT-616276 ("Preferred Properties Audit") for conduct occurring from January 1, 2015 to January 1, 2016 ("Preferred Properties Audit Period").

24. On or about February 29, 2016 and March 1, 2, 8, 9, 15, 16 & 17, 2016, MREC conducted a Probationary Audit of Branson Premier Property Management, LLC, #DJ-616257 ("Branson Premiere Audit") for conduct occurring from January 1, 2015 to January 1, 2016 ("Branson Premiere Audit Period").

25. During the Audit Period, McAdams, Preferred Properties, and Branson Premiere maintained the following escrow accounts:

a. Regions Bank, Account No. XXXXXX1699
b. Regions Bank, Account No. XXXXXX1680
c. Regions Bank, Account No. XXXXXX9735
d. Regions Bank, Account No. XXXXXX9743
e. Branson Bank, Account No. XX278
f. Branson Bank, Account No. XX294
g. Central Bank of Branson, Account No. XXXXXX445
h. Central Bank of Branson, Account No. XXXXXX464
i. Central Bank of Branson, Account No. XXXXXX315

Count I
FAILURE TO REMIT FUNDS

26. The MREC realleges and incorporates by reference paragraphs 1 through 25 as though fully set herein.

27. During the Preferred Properties Audit, McAdams failed to remit funds collected on behalf of owners, upon the property owner terminating McAdams management of the property and the broker did not have written authorization to hold funds for the owners, in violation of Section 339.100.2(3), RSMo, as follows:

a. Property located at 252 Bull Shoals Drive, owned by Mary Smith, management of the property ceased in October of 2015, $250.00 was held in his broker operating account for the benefit of Ms. Smith, as of 01/29/2016.

b. Property located at 174 Arrowhead Circle, owned by Mike Coen, management of the property ceased in November of 2015, $250.00 was held in his broker operating account for the benefit of Mr. Coen, as of 01/29/2016.

28. McAdams stated to the MREC examiner that he did not currently manage the property's and failed to produce a current written management agreement for these owners.

29. Based on the conduct alleged in this count, McAdams and Preferred Properties failed to account for, or to remit money belonging to others in violation of §§339.100.2(3), and 339.100.2(15), RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count II
FAILURE TO PERFORM THE TERMS OF A WRITTEN AGREEMENT

30. The MREC realleges and incorporates by reference paragraphs 1 through 29 as though fully set herein.

31. During the Preferred Properties Audit, McAdams failed to perform the terms of the written management agreement with landlords Gail and Terry Olsen, by failing to deposit rent and owner funds into a property management escrow account, for property's located at 710, 716, 730, and 736 Parkview Drive, in violation of Section 339.730.1, RSMo.

32. The management agreement with the Olsen's states that "[a]ll current rent and any money received from owner or owner's behalf for payment of owner's expenses related to the management of the property, shall be deposited and maintained in a property management escrow account."

33. McAdams stated to MREC examiner that he forwarded to the property owners all deposits.

34. Based on the conduct alleged in this count, McAdams and Preferred Properties failed to perform the terms of a written agreement, in violation of §§339.100.2(15) and 339.730.1, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count III
BROKER FAILED TO DEPOSIT SECURITY DEPOSITS INTO AN ESCROW ACCOUNT

35. The MREC realleges and incorporates by reference paragraphs 1 through 34 as though fully set herein.

36. During the Preferred Properties Audit, McAdams failed to perform the terms of the written management agreement with landlords Gail and Terry Olsen, by failing to deposit security deposits, and other deposits, into a property management escrow account, and instead allowed the owners of the property to hold the security deposit in place of McAdams, in violation of §§ 339.100.2(1) and (15), 339.730.1, RSMo and 20 CSR 2250-8.220(2), as follows:

a. Property located at 710 Parkview Drive, failed to deposit the security deposit of $595.00, into an escrow account.

b. Property located at 716 Parkview Drive, failed to deposit the security deposit of $350.00 into an escrow account.

c. Property located at 730 Parkview Drive, failed to deposit the security deposit of $600.00 into an escrow account.

d. Property located at 736 Parkview Drive, failed to deposit the security deposit of $595.00 and pet deposit of $250.00 into an escrow account.

37. Section 4(I) of the management agreement between Preferred Properties and Gail and Terry Olsen states "security deposits ... shall be held by agent and maintained in an escrow account."

38. McAdams stated to the MREC examiner that he forwarded the security deposits to the property owners and failed to provide a written agreement for the handling of security deposits between McAdams and the property owners.

39. Based on the conduct alleged in this count, McAdams and Preferred Properties failed to deposit funds into an escrow account, in violation of §§339.100.2(1) and (15), 339.730.1, RSMo, and 20 CSR 2250-8.220(2), providing

cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count IV
BROKER DISBURSED FUNDS FROM PROPERTY MANAGEMENT ESCROW ACCOUNT WHEN OWNERS BALANCE WAS NOT SUFFICIENT TO COVER THE DISBURSEMENTS

40. The MREC realleges and incorporates by reference paragraphs 1 through 39 as though fully set herein.

41. During the Preferred Properties Audit, McAdams disbursed funds from a property management escrow account with Regions Bank, account number XXXXX9743, when the owners balance was not sufficient to cover the disbursements, for property located at 2508 W. Barton Road and disbursed to owner Nancy DiFabio ("DiFabio") and to McAdams for operating expense, in violation of 20 CSR 2250-8.220(1), as follows:

a. February 2015, disbursement of $2,975.00 to DiFabio and $76.00 to McAdams, left a negative balance of $2,101.00.

b. March 2015, disbursement of $874.00 to DiFabio and $76.00 to McAdams, left a negative balance of $1,151.00.

c. April 2015, no disbursement to DiFabio, $76.00 to McAdams, left a negative balance of $1,227.00.

d. May 2015, no disbursement to DiFabio, $76.00 to McAdams, left a negative balance of $353.00.

42. Based on the conduct alleged in this count, McAdams and Preferred Properties failed to maintain funds in a special account, and disbursed owners funds from escrow accounts when the owner's funds were insufficient to cover the disbursements, in violation of §§339.100.2(1) and (15), RSMo, as set forth above, and 20 CSR 2250-8.220(1), providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count V

BROKER FAILED TO NOTIFY THE COMMISSION CONCERNING OPENING AND CLOSING OF PROPERTY MANAGEMENT ESCROW ACCOUNTS

43. The MREC realleges and incorporates by reference paragraphs 1 through 42 as though fully set herein.

44. During the Preferred Properties Audit, McAdams failed to notify the Commission when a property management escrow or trust account is closed; failed to register with the Commission a new property management escrow or trust account, and failed to notify the Commission of the opening or closing of a registered account within ten (10) days, in violation of §339.105.2, RSMo, and 20 CSR 2250-8.220(7), as follows:

a. Regions Bank Account No. XXXXXX1699 and XXXXXX1680 were registered with MREC as the

escrow accounts for the brokerage on February 24, 2016. These accounts were closed in June of 2014.

b. Branson Bank Account No. XX278 and XX294 were escrow accounts for the brokerage until 07/01/2014 when the accounts were closed. The escrow accounts with Branson Bank were never registered as open with MREC or that the accounts were closed.

c. Regions Bank Account No. XXXXXX9735 and XXXXXX9743 were property management trust accounts for Gold Star Property Management, aliases for Preferred Property, the accounts were never registered with MREC.

45. Based on the conduct alleged in this count, McAdams and Preferred Properties failed to notify MREC of a new property management escrow or trust account, and failed to properly notify MREC of the opening or closing of a registered account timely, in violation of §§ 339.100.2(15) and 339.105.2, RSMo, and 20 CSR 2250-8.220(7), providing cause to discipline their real estate license pursuant to paragraph 41(G) of the Settlement Agreement.

Count VI
BROKER COMMINGLINED FUNDS IN PROPERTY MANAGEMENT ESCROW ACCOUNTS

46. The MREC realleges and incorporates by reference paragraphs 1 through 45 as though fully set herein.

47. During the Branson Premiere Audit, McAdams maintained personal funds in the property management escrow accounts with the Central Bank of Branson, in violation of §339.105.1, as follows:

a. As of 07/30/2015, Account Number XXXXXX445, McAdams maintained $13,837.13 in personal funds.

b. As of 07/31/2015, Account Number XXXXXX464, McAdams maintained $6,690.34 in personal funds.

c. As of 07/31/2015, Account Number XXXXXX315, McAdams maintained $2,643.79 in personal funds.

48. McAdams stated to the MREC examiner that once he identified property owner's funds in the account and transferred the funds to his new property management escrow account(s), the remaining money belonged to him and he withdrew his funds and closed the account.

49. Based on the conduct alleged in this count, McAdams and Branson Premiere commingled funds in property management escrow accounts, in violation of §§339.100.2(15), and 339.105.1, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count VII
BROKER COMMINGLINED FUNDS IN PROPERTY MANAGEMENT ESCROW ACCOUNTS WHICH CAUSED TEMPROARY OVERAGES

50. The MREC realleges and incorporates by reference paragraphs 1 through 49 as though fully set herein.

51. During the Branson Premiere Audit, McAdams maintained personal funds in the property management escrow accounts with the Central Bank of Branson, and due to the commingling of personal and business funds, caused a temporary overage in those accounts, in violation of §339.105.1, as follows:

a. As of 07/30/2015 Account Number XXXXXX445, was approximately a $13,837.13 overage in the account.

b. As of 07/31/2015, Account Number XXXXXX464, was approximately a $6,690.34 overage in the account.

c. As of 07/31/2015, Account Number XXXXXX315, was approximately a $2,643.79 overage in the account.

52. McAdams stated to the MREC examiner that once he identified property owner's funds in the account and transferred the funds to his new property management escrow account(s), the remaining money belonged to him and he withdrew his funds and closed the account.

53. Based on the conduct alleged in this count, McAdams and Branson Premiere commingled funds in property management escrow accounts, in violation of §§ 339.100.2(15) and 339.105.1, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count VIII
BROKER DISTRIBUTED FUNDS FROM ESCROW ACCOUNTS WHEN OWNERS BALANCE WAS NOT SUFFICIENT TO COVER DISBURSEMENT

54. The MREC realleges and incorporates by reference paragraphs 1 through 53 as though fully set herein.

55. During the Branson Premiere Audit, McAdams made payments related to an owner's property when the amount of owner funds held in the account was not sufficient to cover the disbursement, in violation of 20 CSR 2250-8.220(1), as follows:

a. Negative balance of $149.50 as of June 2015, for the Merritt property at 3108 Stone Road.

b. Negative balance of $149.50 as of May 2015, for the Merritt property at 3108 Stone Road.

c. Negative balance of $464.17 as of October 2015, for the Hambly property at 5036 Walnut Drive.

d. Negative balance of $109.23 as of September 2015, for the Browne property at 1193 S. 21st Ave.

e. Negative balance of $121.00 as of January 2016, for the Browne property at 1193 S. 21st Ave.

56. Based on the conduct alleged in this count, McAdams and Branson Premiere failed to maintain funds in a special account, and disbursed owner's funds from escrow accounts when owner's funds were insufficient to cover the disbursement, in violation of §§339.100.2(1) and (15), RSMo, as set forth above, and 20 CSR 2250-8.220(1), providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

Count IX

BROKER FAILED TO WITHDRAW MONTHLY INTEREST FROM ESCROW ACCOUNTS

57. The MREC realleges and incorporates by reference paragraphs 1 through 56 as though fully set herein.

58. During the Branson Premiere Audit, McAdams failed to withdraw monthly interest from the property management escrow account held by Central Bank of Branson, Account No. XXXX9445, in violation of 20 CSR 2250-8.220(6), as follows:

a. Interest of $2.01 in February of 2015.

b. Interest of $2.28 in March of 2015.

c. Interest of $1.56 in April of 2015.

d. Interest of $0.99 in May 2015.

e. Interest of $1.10 in June of 2015.

59. McAdams did not remove the interest from the property management escrow account until July of 2015, when he made the closing of the account withdraw.

60. Based on the conduct alleged in this count, McAdams and Branson Premiere commingled funds due to them in escrow accounts, in violation of §§339.100.2(15), 339.105.1, RSMo, and 20 CSR 2250-8.220(6), providing cause to discipline their real estate licenses pursuant to paragraph 41(G) of the Settlement Agreement.

COUNT X
§339.100.2(16)

61. The MREC realleges and incorporates by reference paragraphs 1 through 60 as though fully set herein.

62. The conduct of McAdams, Preferred Properties, and Branson Premiere, individually and collectively, as alleged in each count of the Complaint, individually and collectively demonstrates that they (1) lack good moral character; (2) do not bear a good reputation for honesty, integrity, and fair dealing; and (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 MREC to refuse to issue a license under §339.040.1, RSMo, providing cause to discipline the real estate licenses of McAdams, Preferred Properties, and Branson Premiere pursuant to §339.100.2, RSMo, set forth above.

COUNT XI
§339.100.2(19)

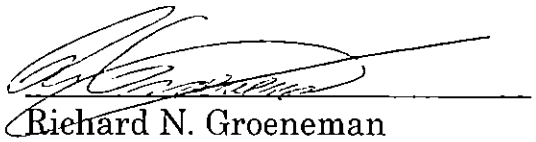
63. The MREC realleges and incorporates by reference paragraphs 1 through 62 as though fully set herein.

64. The conduct of McAdams, Preferred Properties, and Branson Premiere, individually and collectively, as alleged in each count of the Complaint, individually and collectively, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross negligence, providing cause to discipline the real estate licenses of McAdams, Preferred Properties, and Branson Premiere pursuant to §339.100.2(19), RSMo, set forth above.

WHEREFORE, Petitioner requests MREC to hold a hearing to determine that a violation(s) occurred and may impose disciplinary action under § 324.042, RSMo, for the violations noted above, and for other such relief as the Commission deems appropriate.

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General



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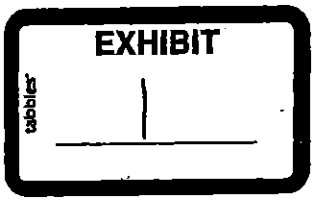
SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
BRANSON PREMIERE PROPERTY MANAGEMENT, LLC
AND
PREFERRED PROPERTIES OF BRANSON, LLC
AND
R. SCOTT MCADAMS

Branson Premiere Property Management, LLC (Branson Premiere), Preferred Properties of Branson, LLC (Preferred Properties), and R. Scott McAdams (McAdams), and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Branson Premiere's license as a Real Estate Association, license no. 2007012579; Preferred Properties' license as a Real Estate Association, license no. 2005006108; and McAdam's licenses as a Real Estate Broker Associate, license nos. 2008037718 and 2005010604, will be 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. 2012. The MREC, Branson Premiere, Preferred Properties, and McAdams jointly stipulate and agree that a final

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



disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Branson Premiere, Preferred Properties, and McAdams 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 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 Branson Premiere, Preferred Properties, and McAdams 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, Branson Premiere, Preferred Properties, and McAdams 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.

Branson Premiere, Preferred Properties, and McAdams 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. Branson Premiere, Preferred Properties, and McAdams stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the MREC that Branson Premiere's license as a Real Estate Association, license no. 2007012579; Preferred Properties' license as a Real Estate Association, license no. 2005006108; and McAdam's licenses as a Real Estate Broker Associate, license nos. 2008037718 and 2005010604, are subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

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

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo Supp. 2012, for the purpose of executing and enforcing the provisions of §§ 339.010 to 339.180 and §§ 339.710 to 339.860, RSMo (as amended), relating to real estate salespersons and brokers.

2. Branson Premiere is licensed as a Real Estate Association, license no. 2007012579. At all times relevant herein, Branson Premiere's real estate license was current and active.

3. Branson Premiere Property Management, LLC is a Missouri limited liability company, charter no. LC0678010.

4. Preferred Properties is licensed as a Real Estate Association, license no. 2005006108. At all times relevant herein, Preferred Properties' real estate license was current and active.

5. Preferred Properties of Branson, LLC is a Missouri limited liability company, charter no. LC0637013.

6. McAdams is licensed as a Real Estate Broker Associate, license nos. 2008037718 and 2005010604. At all times relevant herein, McAdams' real estate licenses were current and active.

7. At all times relevant herein, McAdams was the designated broker for Branson Premiere and Preferred Properties, and, as such, bears responsibility for his own conduct as well as that of Branson Premiere and Preferred Properties and their affiliates.

8. McAdams' real estate licenses are culpable for the conduct and violations revealed by the MREC's audits of both Branson Premiere and Preferred Properties.

9. References herein to McAdams are also references to Branson Premiere and Preferred Properties.

10. References herein to Branson Premiere and Preferred Properties are also references to McAdams.

11. Section 339.710(12), RSMo, defines the term "designated broker" and provides:

> **"Designated broker"**, any individual licensed as a broker who is operating pursuant to the definition of

> "real estate broker" as defined in section 339.010, or any individual licensed as a broker who is appointed by a partnership, association, limited liability corporation, or a corporation engaged in the real estate brokerage business to be responsible for the acts of the partnership, association, limited liability corporation, or corporation. Every real estate partnership, association, or limited liability corporation, or corporation shall appoint a designated broker[.]

12. Rule 20 CSR 2250-8.020(1), regarding the supervision of real estate related activities of a brokerage, states in part:

> Individual brokers, designated brokers, and office managers/supervising brokers shall be responsible for supervising the real estate related activities including the protection of any confidential information as defined under 339.710.8, RSMo of all licensed and unlicensed persons associated with them, whether in an individual capacity or through a corporate entity, association or partnership. . . .

13. Rule 20 CSR 2250-8.120(7), regarding the management of escrow accounts, states:

> The designated broker and the branch office manager shall be responsible for the maintenance of the escrow account and shall ensure the brokerage's compliance with the statutes and rules related to the brokerage escrow account(s).

The First Audit

14. From July 6, 2010 until July 14, 2010, the MREC conducted an audit of the real estate activity performed by Branson Premiere and McAdams. The audit revealed the following problems:

i. Branson Premiere managed ten properties during the audit period without obtaining a written agreement from the properties' owners.

ii. Net overages of $453.73 in the property management escrow account, Ozark Mountain Bank, account no. xxxxxx15 (the "property management escrow account").

iii. Branson Premiere failed to maintain adequate records for the security deposit escrow account, Ozark Mountain Bank, account no. xxxxx45, in that the check register used by the broker was inaccurate and incomplete.

iv. There were identified overages and shortages in the security deposit escrow account, Ozark Mountain Bank, account no. xxxxx45.

15. Because they managed property without a written agreement, Branson Premiere and McAdams violated § 339.780.2 and 20 CSR 2250-8.200(1), which provide:

> Section 339.780.2:
>
> 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.
>
> 20 CSR 2250-8.200(1):
>
> (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.

16. Because of the net overages identified in the preceding paragraphs, Branson Premiere and McAdams violated § 339.105.1, which states:

> 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account[.]

17. Because Branson Premiere failed to maintain adequate records for the security deposit escrow account, Ozark Mountain Bank, account no. xxxxx45, Branson Premiere and McAdams violated § 339.105.3, which provides:

> 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.

18. Because of the identified overages and shortages to the security deposit escrow account, Ozark Mountain Bank, account no. xxxxx45, identified in the preceding paragraphs, Branson Premiere and McAdams violated § 339.105.1, which states:

> 1. Each broker who holds funds belonging to another shall maintain such funds in a separate bank account in a financial institution which shall be designated an escrow or trust account. This requirement includes funds in which he or she may have some future interest or claim. Such funds shall be deposited promptly unless all parties having an interest in the funds have agreed otherwise in writing. No broker shall commingle his or her personal funds or other funds in this account with the exception that a broker may deposit and keep a sum not to exceed one thousand dollars in the account from his or her personal funds, which sum shall be specifically identified and deposited to cover service charges related to the account[.]

19. Because they managed property without a written management agreement in violation of § 339.780.2 and 20 CSR 2250-8.200(1), cause exists to discipline Branson Premiere's and McAdams' licenses under § 339.100.2 (15), which provides:

> 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:
>
> ...
>
> (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 339.1010 to 339.180 and sections 339.710 to 339.860*[.]

20. Because of the net overages identified in the property management escrow account, as stipulated to herein, cause exists to discipline their real estate licenses under § 339.100.2(15), which is stated in the previous paragraph.

21. Because Branson Premiere and McAdams failed to maintain adequate records for the security deposit escrow account, cause exists to discipline their real estate licenses under § 339.100.2(15), set forth above.

22. Because of the identified overages and shortages in the security deposit escrow account, cause exists to discipline Branson Premiere's and McAdams' real estate licenses under § 339.100.2(15), which is set forth above.

23. Section 339.040.1, RSMo, states:

> Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who

> actively participate in such entity's brokerage, broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:
>
> ***
>
> (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

24. Branson Premiere's and McAdams' conduct, as described above, demonstrates a lack of competence to transact the business of a broker in such a manner to safeguard the interest of the public, and thus provides cause to discipline their real estate licenses under § 339.100.2(16), which states:

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

The Second Audit

25. From November 14 through December 1, 2011, the MREC conducted a second audit of the real estate activity performed by Branson Premiere and McAdams. The second audit revealed the following problems:

i. A net shortage of $2,470.46 in the property management escrow account, Ozark Mountain Bank, account no. xxxxx64 (the "property management escrow account").

ii. A net overage of $119.12 in the security deposit escrow account, Ozark Mountain Bank, account no. xxxxx45 (the "security deposit escrow account").

iii. In eleven incidents, there were temporary shortages in the property management escrow account due to negative owner balances.

iv. In twenty-six instances, owner statements that were sent to the owner contained inaccurate amounts.

v. On fifteen occasions, Branson Premiere and McAdams disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.

vi. In seven instances, Branson Premiere and McAdams failed to note the related transaction on checks that were written, the corresponding check stub, or other record of disbursement.

vii. In fifty-eight occurrences, Branson Premiere and McAdams failed to note the related transaction on deposit tickets for the property management escrow account.

26. Because of the overages and shortages identified in the preceding paragraphs, Branson Premiere and McAdams violated § 339.105.1, which is set forth herein.

27. Because they allowed temporary shortages in the property management escrow account, Branson Premiere and McAdams violated § 339.105.1, which is set forth herein.

28. Because they provided inaccurate financial statements to owners, Branson Premiere and McAdams, cause exists to discipline their real estate licenses under § 339.100.2(3), which is set forth herein.

29. Branson Premiere and McAdams' disbursal of funds on two separate occasions out of the property management escrow account when the owner's balance was not sufficient to cover the disbursement, is in violation of 20 CSR 2250-8.220(1), which states:

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

30. Branson Premiere and McAdams' failure to note the related transaction on checks that were written, the corresponding check stub, or other record of disbursement on seven occurrences violates 20 CSR 2250-8.220(8), which states:

> (8) Each check written on an escrow account, or each corresponding check stub, or other record of disbursement of funds from the account and each deposit ticket shall indicate the related transaction. Each check written on an escrow account for licensee fees or commission shall be made payable to the licensee who is owed the fee or commission or to the firm's general operating account.

31. Branson Premiere and McAdams' failure to note the related transaction on deposit tickets for the property management escrow account on fifty-eight occasions violates 20 CSR 2250-8.220(8), which is stated in the preceding paragraph.

32. Because of their violations of 20 CSR 2250-8.220(1) and 20 CSR 2250-8.220(8), cause exists to discipline Branson Premiere's and McAdams' real estate licenses under § 339.100.2(15), which is set forth herein.

33. Section 339.040.1, RSMo, states:

> Licenses shall be granted only to persons who present, and corporations, associations, partnerships, limited partnerships, limited liability companies, and professional corporations whose officers, managers, associates, general partners, or members who actively participate in such entity's brokerage,

broker-salesperson, or salesperson business present, satisfactory proof to the commission that they:

***

(3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

34. Branson Premiere and McAdams' conduct, as described above, demonstrates a lack of competence to transact the business of a broker in such a manner to safeguard the interest of the public, and thus provides cause to discipline their real estate licenses under § 339.100.2(16), which is set forth herein.

Preferred Properties' Audit

35. From March 12, 2012 through March 26, 2012, the MREC conducted an audit of the real estate activity performed by Preferred Properties and McAdams for the period of March 2011 through March 12, 2012. The audit revealed the following problems:

i. Preferred Properties and McAdams managed twenty-nine properties during the audit period without obtaining a written agreement with the property owners.

ii. In six instances, Preferred Properties and McAdams provided inaccurate owner's statements to their clients in that the ending

balance of one month did not reflect the beginning balance of the following month.

iii. On nine occasions, Preferred Properties and McAdams disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.

36. Because Preferred Properties and McAdams managed properties without a written agreement, Preferred Properties and McAdams violated § 339.780.2 and 20 CSR 2250-8.200(1), which is set forth herein, and provides cause to discipline their licenses under § 339.100.2(15), which is set forth herein.

37. Because they failed to timely account for the funds of others and provided inaccurate financial statements to the owners, Preferred Properties and McAdams violated § 339.790.2(1), which state:

> 2. A real estate broker and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:
>
> (1) Accounting in a timely manner for all money and property related to, and received during, the relationship;

thus, providing cause to discipline their licenses under § 339.100.2(3), which is set forth herein.

38. Preferred Properties and McAdams' disbursal of funds on nine separate occasions out of the property management/rental escrow account, Regions Bank account no. xxxxxxx699, when the owner's balance was not sufficient to cover the disbursement, is in violation of 20 CSR 2250-8.220(1), which is set forth herein and provides cause to discipline their licenses under § 339.100.2(15), as set forth above.

39. Preferred Properties and McAdams' conduct, as described above, demonstrates a lack of competence to transact the business of a broker in such a manner to safeguard the interest of the public, and, therefore, provides cause to discipline their licenses under § 339.100.2(16), RSMo Supp. 2012, which is set forth above.

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. 2012.

40. **Branson Premiere's, Preferred Properties', and McAdams' licenses are on probation.** Branson Premiere's license as a Real Estate Association, license no. 2007012579; Preferred Properties' license as a Real Estate Association, license no. 2005006108; and McAdam's licenses as a Real Estate Broker Associate, license nos. 2008037718 and 2005010604, are hereby placed on PROBATION for a period of FIVE (5) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Branson Premiere, Preferred Properties, and McAdams shall be entitled to practice as Real Estate Assocation and a Real Estate Broker Associate, respectively, under Chapter 339, RSMo, as amended, provided Branson Premiere, Preferred Properties, McAdams adhere to all the terms of this agreement.

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

A. Branson Premiere, Preferred Properties, and McAdams shall collectively and/or individually submit to an audit conducted by the MREC within two years after this Settlement Agreement becomes effective.

B. Branson Premiere, Preferred Properties, and McAdams shall keep the MREC apprised at all times of their current addresses and telephone numbers at each place of residence and business. Branson Premiere, Preferred Properties, and McAdams shall notify the MREC in writing within ten (10) days of any change in this information.

C. Branson Premiere, Preferred Properties, and McAdams 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, Branson Premiere, Preferred Properties, and McAdams 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, Branson Premiere, Preferred Properties, and McAdams may surrender their real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Branson Premiere, Preferred

Properties, or McAdams apply for a real estate license after surrender, Branson Premiere, Preferred Properties, and McAdams 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. Branson Premiere, Preferred Properties, and McAdams 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. Branson Premiere, Preferred Properties, and McAdams 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, Branson Premiere, Preferred Properties, and McAdams 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. Branson Premiere, Preferred Properties, and McAdams 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. Any cause to discipline Branson Premiere, Preferred Properties, and McAdams's licenses as a real estate association and broker under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

42. Upon the expiration of the disciplinary period, the licenses of Branson Premiere, Preferred Properties, and McAdams shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Branson Premiere, Preferred Properties, and McAdams have violated any term or condition of this Settlement

Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Branson Premiere, Preferred Properties, and McAdams' licenses.

43. 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.

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

45. 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.

46. 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. Branson Premiere, Preferred Properties, and McAdams agree and stipulate that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

47. By entering into this Settlement Agreement, Branson Premiere, Preferred Properties, and McAdams do not admit that the property management agreements at issue were not civilly enforceable agreements; rather, Branson Premiere, Preferred Properties, and McAdams only admit that the property management agreements at issue were not sufficient under the MREC's interpretation of State Regulation 20 CSR 2250-8.200(1).

48. No person or entity is intended to be a third-party beneficiary of the provisions of this Settlement Agreement for purposes of any other civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Settlement Agreement in any separate action. The MREC and Branson Premiere, Preferred Properties, and McAdams acknowledge that this Settlement Agreement is not to be construed as an admission of any facts

constituting civil liability to any third-party or any wrongdoing which would subject Branson Premiere, Preferred Properties, and McAdams to civil liability to any third-party.

49. In addition, Branson Premiere, Preferred Properties, and McAdams enter into this Settlement Agreement relying upon legal precedent from the Appellate Courts of the State of Missouri, specifically, *State ex rel. Mallan v. Huesemann*, 942 S.W.2d 424 (Mo. App. W.D. 1997) for judicial precedent that this Settlement Agreement is inadmissible in any civil action relating to the facts and circumstances as set forth herein.

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

51. 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.

52. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

53. Branson Premiere, Preferred Properties, and McAdams, together with their partners, members, managers, 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.

54. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEES

R. SCOTT MCADAMS 5/7/14 DATE

BRANSON PREMIERE PROPERTY MANAGEMENT, LLC

By: R. SCOTT MCADAMS, President

Date: 5/7/14

PREFERRED PROPERTIES OF BRANSON, LLC

By: R. SCOTT MCADAMS, President

Date: 5/7/14

MISSOURI REAL ESTATE COMMISSION

By: JANET CARDER, Executive Director 5/15/14 Date

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