SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
KENNETH M. MCMILLAN

Kenneth M. McMillan (McMillan) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether McMillan's real estate broker and broker officer licenses, nos. 1999019798 and 2002019406, 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 Cum. Supp. 2009. The MREC and McMillan jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2009.

McMillan acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; 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 him at the hearing; the right to present evidence on his 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 him; the

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

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 McMillan 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 him by law, McMillan knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

McMillan acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. McMillan stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that McMillan's real estate broker and broker officer licenses, license nos. 1999019798 and 2002019406, are subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010-339.205 and 339.710-339.855, RSMo, as amended.

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

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 McMillan 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 Cum. Supp. 2009, 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. McMillan holds a real estate broker license, no. 1999019758 which was current and active until suspended on October 30, 2010.

3. McMillan held a real estate broker officer license, nos. 2002019406 which expired on June 30, 2006.

4. On August 12, 2010, the MREC sent a letter by both certified and regular mail to McMillan's last registered address with the MREC informing him that the MREC had been notified that he was not in compliance with section 324.010 RSMo, and that his license would be suspended by operation of law on October 30, 2010, unless he resolved the noncompliance issue with the Department of Revenue.

5. On or about November 9, 2010, the MREC sent another letter to McMillan by both certified and regular mail informing him that his real estate broker license was suspended by operation of law for failing to comply with section 324.010, RSMo. The November 9th letter informed McMillan that he must return his license to the MREC within ten (10) days from the date of the correspondence and close his brokerage.

6. On January 12, 2011, the MREC sent another letter by both certified and regular mail to McMillan informing him that failure to provide a response to the MREC's correspondence violated 20 CSR 2250-8.170(1), and providing him another 30 days within which to return his license and close his brokerage.

7. McMillan did not respond in writing to the MREC's written requests.

8. Section 324.010, RSMo Cum. Supp. 2009, states in part:

> All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to . . . chapters 324 to 346, RSMo, shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. . . .

9. Section 339.100.2, RSMo Cum. Supp. 2009, provides in relevant 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:
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> * * *
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> (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[.]

10. Because McMillan has failed to respond in writing to the MREC's written requests or inquiries, McMillan has violated 20 CSR 2250-8.170(1), which states:

> (1) Failure of a licensee to respond in writing, within thirty (30) days from the date of the commission's written request or inquiry, mailed to the licensee's address currently registered with the commission, will be sufficient grounds for taking disciplinary action against that licensee.

11. Because McMillan has failed to surrender his license, McMillan has violated 20 CSR 2250-8.155(2)(A)(3), which states:

> (2) Revocation/Suspension
>
> (A) Sole-Proprietorship/Individual Broker. Upon the revocation or suspension of a broker's license, the broker shall—
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> * * *

(3) Notify, if the license of the broker has been suspended, all licensees associated with the firm and return all licenses held by the broker to the commission.

12. Based on McMillan's violation of 20 CSR 2250-8.155(2)(A)(3) and 20 CSR 2250-8.170(1), cause exists to discipline McMillan's real estate broker license pursuant to § 339.100.2(15), RSMo Cum. Supp. 2009.

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 Cum. Supp. 2009.

1. **McMillan's license is revoked and all indicia of licensure shall be surrendered immediately.** McMillan's real estate broker license is hereby REVOKED and ALL INDICIA OF LICENSURE SHALL BE SURRENDERED IMMEDIATELY upon this Settlement Agreement becoming effective.

2. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by McMillan of §§ 339.010-339.205 and 339.710-339.855, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

3. 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.

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

5. 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.

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

7. McMillan, together with his partners, 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.

8. McMillan understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining McMillan's license. If McMillan desires the Administrative Hearing Commission to review this Settlement Agreement, McMillan may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

9. If McMillan requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining McMillan's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against McMillan as allowed by law. If McMillan does not request review by

the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

LICENSEE

Kenneth M. McMillan 6/27/2011

Kenneth M. McMillan Date

MISSOURI REAL ESTATE COMMISSION

Janet Carder, Executive Director
Date: July 12, 2011

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