Michael L. Parson
Governor
State of Missouri

Kathleen (Katie) Steele Danner, Division Director
DIVISION OF PROFESSIONAL REGISTRATION

Department of Insurance
Financial Institutions
and Professional Registration
Chlora Lindley-Myers, Director

Missouri Real Estate Commission
3605 Missouri Boulevard
P.O. Box 1339
Jefferson City, MO 65102-1339
E-Mail: realestate@pr.mo.gov
http://pr.mo.gov/realestate.asp

Terry W. Moore
Executive Director

Telephone: 573-751-2628
573-751-2777 FAX
800-735-2966 TTY
800-735-2966 Voice Relay Missouri

July 16, 2018

David E Soto
Soto Property Management LLC
1213 N Kingshighway Suite 200
Cape Girardeau MO 63701

Re: Probation

Dear Mr. Soto:

Effective July 15, 2015, a Settlement Agreement between MREC and Soto Property Management LLC and David E. Soto was signed placing Soto Property Management LLC and David E. Soto on 3 years probation, and with a $5,000 Civil Penalty; 6 hours of a CE course; and a re-audit in 1 year.

I am pleased to inform you that as of, July 15, 2018 you have completed the probation imposed against your entity license and your real estate license. Therefore, you no longer have a probated real estate license with the Missouri Real Estate Commission.

If you have any questions, I can be reached through option 4 of the telephone number identified above.

Good luck with your real estate career.

Sincerely,

DeWayne Hickey
Enforcement Supervisor

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND SOTO PROPERTY MANAGEMENT LLC
AND DAVID E. SOTO

Come now Soto Property Management LLC ("Soto LLC") and David E. Soto ("Soto") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Soto Property Management LLC's license as a real estate association and David E. Soto's license as a real estate broker associate will be subject to discipline.

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

Licensees Soto LLC and Soto acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by a preponderance of the evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided her by operation of law, Soto LLC and Soto 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 them.

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

For the purpose of settling this dispute, Soto LLC and Soto stipulate that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that their licenses,

---

[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

numbered 2008013886 (Soto LLC) and 201010761 (Soto) are subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Fact and Conclusions of Law

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

2. Licensee, Soto Property Management LLC, holds an active real estate association license from the Commission, license number 2008013886. Licensee's license expires June 30, 2016. Licensee's license was current and active at all relevant times herein. Licensee David E. Soto is the designated broker for Soto Property Management LLC.

3. Licensee, David E. Soto, holds an active broker associate license from the Commission, license number 2001010761. Licensee's license expires June 30, 2016. Licensee's license was current and active at all relevant times herein.

4. On August 22, 28-30, 2012 and September 4, 6, 10 and 13, 2012, the Commission conducted a random audit of Licensees' licenses. The audit revealed numerous violations of Chapter 339 and regulations promulgated thereunder:

a. Licensees failed to timely remit funds belonging to another on at least two occasions which constitutes cause to discipline Licensee's licenses pursuant to section 339.100.2(3), RSMo.

i. In March 2012, Licensees ceased management for Owner B. Licensees maintained two escrow accounts at Regions Bank, accounts ending in 3322 and 3357, to hold tenant's security deposits. Licensees had no other authorization to hold the funds in accounts 3322 and 3357 after the management ceased. Licensees' security deposit balance sheet and management agreement showed the balance of funds. As of the 2012 audit, the amount of Owner B funds in the accounts was $1,800 despite the management ending in March 2012.

ii. In July 2008, Licensees ceased management for owner SEMO. Licensees maintained two escrow accounts at Regions Bank, accounts ending in 3322 and 3357, to hold tenant's security deposits. Licensees had no other authorization to hold the funds in accounts 3322 and 3357 after the management ceased. Licensees' security deposit balance sheet and management agreement showed the balance of funds. As of the 2012 audit, the amount of Owner B funds in the accounts was $460 despite the management ending in July 2008.

b. Licensees did not maintain records necessary to determine the adequacy of the property management escrow accounts at Regions Bank, accounts 3322 and 3357 in violation of § 339.105.3, RSMo.

i. The Commission's examiner was unable to determine liabilities for the accounts. For 16 of the 30 lease agreements, the security deposit in the account did not match the security deposit in Licensee's security deposit ledger. For two of the properties, Licensee failed to transfer a portion of the balance to a different property. Because of the ambiguity of the security deposit balances, the Commission was unable to identify a credible liability figure.

ii. Licensees had incomplete and inaccurate bank reconciliation for the accounts. The July 31, 2012 bank reconciliation outstanding check list contained eight outstanding electronic payments from prior to the audit period and eleven from the audit period. The list also identified one check as outstanding that had, according the bank records, cleared the bank. Six deposits from prior to the audit period and 21 from during the audit period were also listed as outstanding. According to Licensee Soto, these items were not reconciled properly. Because of all the incorrect reconciliation for deposits and withdrawals, the Commission was unable to determine an accurate account balance for the accounts.

iii. Licensee did not retain a voided check (check #1547) from account 3322. Licensees' failure to retain all the voided checks contributed to the inability of the Commission to determine an accurate account balance.

c. Licensees did not maintain records necessary to determine the adequacy of the property management escrow accounts at Regions Bank, account ending in 3306 in violation of § 339.105.3, RSMo. Licensees used the account to collect rents and owner funds and to pay expenses related to managed properties. The Commission was unable to reconcile the account because:

i. The Commission was unable to determine the liabilities for account 3306 because Licensees did not have a liability report to provide the Commission. Licensees' reports provided to the owner consisted of a monthly activity statement but no ending balance.

ii. Licensees did not reconcile the account to liabilities on a monthly basis. The bank reconciliation statement from QuickBooks listed the cleared balance which did not match the ending balance on the bank statement.

iii. The July 31, 2012 bank reconciliation contained six electronic payments from prior to the audit that were still outstanding. Licensee Soto stated the payments were never issued. There were also eight checks listed as outstanding that had cleared the bank. Two checks cleared the bank for different amounts than stated on Licensee's outstanding check list. One check listed as outstanding had been voided. One check that was outstanding was not listed as such. Five checks listed as cleared on Licensee's bank reconciliation did not clear the bank during the audit period and 12 checks were listed as outstanding from prior to the audit period. An additional five items prior to the audit period, without any check numbers, were also listed as outstanding. Three unexplained items were listed as outstanding deposits from 2009. Due to all these inaccuracies, the Commission was unable to determine an accurate account balance.

iv. Licensees did not maintain electronic deposit records. By not maintaining them, the Commission could not determine the balance of funds in the accounts.

v. Licensees did not maintain electronic payment records and therefore the balance of funds in the account could not be determined.

vi. Licensees failed to maintain four voided checks. The failure to maintain all voided checks contributed to the Commission's inability to determine an accurate account balance.

d. Licensees failed to perform the terms of the written agreement with the landlord on 13 instances. Licensees did not follow all agreed upon procedures as outline in the management agreement between Licensees and the owner of the property. Licensees' failures constitute a violation of section 339.730.1, RSMo. The 13 instances consist of:

i. Nine instances where Licensee held the security deposits when the management agreement specified that the owner was to hold the security deposits. Despite the management agreement stating the owner was to hold the funds, Licensees' balance sheets demonstrated that Licensees were actually holding the security deposits for tenants of owners R and H.W.O.

ii. Four instances where Licensees did not pay the management fees as specified by the management agreement including not charging, collecting or removing a management fee on late fees collected in December 2011 and March, June and July 2012.

5. On June 12, 2013, the Commission sent Licensee a letter detailing the findings of the audit performed in 2012. The Commission stated that in lieu of proceeding with discipline at that time, the Commission would allow Licensee to try and correct the violations, subject to a re-audit. The letter stated that Licensee's financial records were not sufficient to determine the adequacy of funds. The letter requested written confirmation within 30 days of corrections for the violations including determining the amount of funds in each account for each owner and/or tenant, amending management agreements, establishing a system of tracking electronic debits and credits, documentation regarding overages and shortages identified during the audit and documentation regarding compliance with all statutory and regulatory requirements. The letter also suggested that Licensees procure the services of a Certified Public Accountant and submit quarterly reports to the Commission between September 2013 and June 2014.

6. After obtaining additional time for their response from the Commission, Licensees submitted their response to the June 12, 2013 letter in a letter dated August 28, 2013. Licensees provided a response to all of the findings noted during the audit. Licensees also informed the Commission they hired Certified Public

Accountants (CPAs) to reconcile the amounts and transactions. Licensees stated they amended management agreements and policies within the office. Licensees also submitted reports to the Commission as requested in the June 12, 2013 letter. In a letter dated November 4, 2013 the CPAs stated that "while we have committed significant staff resources and have spent numerous hours working on the reconciliations, we are not able to report [to] the Commission or to Mr. Soto that the accounts have been reconciled." The CPAs stated they would continue working on it and would provide the Commission weekly updates as to the progress of the reconciliation. During the year of CPA reports, the Commission regularly requested additional information from Licensees based on the information in the quarterly reports.

7. On twenty-five days between July 14, 2014 and September 2, 2014, the Commission conducted a limited re-audit of Licensees' licenses due to the results of the 2012 audit. The re-audit revealed numerous violations of Chapter 339 and regulations promulgated thereunder:

a. Licensees did not deposit and maintain rent in an escrow account on seven instances in violation of section 339.105.1, RSMo, and regulations 20 CSR 2250-8.120(4) and 8.120(3) for which discipline of Licensees' licenses is appropriate under section 339.100.2(1), RSMo.

i. On or about July 5, 2013, Licensee Soto deposited rents totaling $684 into his operating bank account instead of the property management escrow account. The money was later transferred to the property management escrow account.

ii. On or about October 15, 2013, Licensee Soto deposited rent totaling $300 into his operating bank account instead of the property management escrow account. The money was later transferred to the property management escrow account.

iii. On or about February 20, 2013, Licensee, on two occasions, deposited security deposit and rent into his operating bank account instead of the property management account. In the first instance, Licensee deposited a total deposit of $700 for tenant L.B. into his operating account. Based on Licensee's records, Licensee then deposited $100 of that into the property management escrow account. In the second instance, Licensee deposited a total of $745 for tenant A.M., $200 of which was then transferred into the property management account. Bank records show that Licensee deposited $2,280 into the operating account on February 20, 2013 including that for A.M.

b. Licensees failed to remit money belonging to others on three occasions in violation of § 339.100.2(3), RSMo.

   i. Licensees failed to remit a total of $218.05 to client Carrington Property Services for three properties in the Cape Girardeau area. Licensees stated they ceased providing property management services for the properties in March 26, 2013 and January 2014 but failed to remit the funds to the owner.

   ii. Licensees failed to remit $26.39 of a security deposit back to a different property owner in Jackson, Missouri.

   iii. Licensees failed to remit $101.60 to the owner of property in Sikeston, Missouri that had been sold two years prior to the date of the audit.

c. Licensees failed to timely remit money that belonged to a property owner in violation of § 339.100.2(3), RSMo. Licensee's records reflected a $1,000 payment made to a Cape Girardeau property owner on January 29, 2014 but according the Licensee, he ceased managing the property in July 2013.

d. Licensees commingled deposits in the property management account at least 18 times in violation of § 339.105.1, RSMo. Licensees deposited rents and security deposits into the operating account, designated broker funds into the property management escrow account and security deposits escrow account. In addition to the instances identified in paragraph 7.a. above, Licensees also deposited broker funds into the property management escrow account. On or about June 18, 2013, Licensees deposited $1,160.25 to the property management escrow account that should have been deposited into the broker account. Licensees then transferred them to the broker account on July 5, 2013 with a notation from Licensee's accountant than the amount was deposited into the escrow account but needed to be transferred into the operating account. On five instances, Licensee also deposited security deposits into the operating account that should have been transferred into the escrow account. The amount of misdeposited funds totaled $2,640 and was later transferred to the property management escrow account. Finally, on five instances, Licensees deposited broker funds into the security deposit escrow account. Licensees stated that the deposits, totaling $201.71, went

into the security deposit account but should have gone into the operating account. Licensee's records show the improper deposit occurred on January 8, 2014 and the transfer to correct the errant deposits occurred on February 10, 2014.

e. Licensees did not maintain records necessary to determine the adequacy of the property management account, account number ending 3306, in violation of § 339.105.3, RSMo.

   i. The Commission examiner was unable to determine all liabilities to the property management account (Regions account #3306). After the initial audit, Licensees purchased new accounting software and opened new property management escrow and security deposit escrow accounts at MRV Banks (account #2194 and 2178 respectively). Licensees' previous accountant continued to deposit funds in both the Regions accounts and the new MRV accounts and continued to post activity in both accounting systems. As of the date of the second audit, there was activity in both accounting software systems that could not be accounted for including outstanding deposits and checks still reflected as outstanding that are greater than a year old. Some of these checks have not cleared the property management account at either bank.

   ii. Licensees were not able to reconcile the account to liabilities on a monthly basis. Licensees hired a CPA to identify and resolve outstanding issues impacting all of his escrow accounts. However, as of the last reconciliation of the account, there was no change in the outstanding items compared to previous reconciliations.

   iii. Licensees' March 31, 2014 bank Reconciliation Detail report's outstanding checks and payments list contained four electronic funds payments (EFTs) dated prior to the audit period that are still outstanding. These EFTs were over a year old and had not cleared the bank. Bank records confirm that no EFTs came out of the bank in August and September 2012 related to management fees owed for two property managers.

   iv. Licensees' March 31, 2014 bank Reconciliation Detail report's outstanding checks and payments list reflected that check #9517, Regions account #3306, was outstanding in the amount of $90.00 payable to D&G Cleaning Services. Regions account #3306

September 30, 2012 bank statement reflected that check number 9517 cleared the bank in the amount of $2,222.83 made payable to Montgomery Bank. The printout of the check confirms this information. Licensees' transaction list by vendor, however, showed check #9517 was made out to D&G Cleaning Services in the amount of $90 and dated September 14, 2012. The D&G Cleaning invoice, however, identified that they had been paid with check #9457. Licensees' Reconciliation Detail report reflected that check #9547 cleared the bank in the amount of $2,222.83.

v. Check #9457 was marked voided in Licensees' accounting system when the check had actually cleared the bank. This resulted in a duplicate mortgage payment for the property owner. The duplicate payment was not reflected on the monthly owner's statement. The property owner's Monthly Settlement Statement dated September 30, 2012, reflected check #9457 as void and check #9517 issued to Montgomery Bank in the amount of $2,222.83. However, the Regions bank statement reflected that both checks cleared the bank for $2,222.83 each.

vi. Electronic funds transfer payment records were not accurately maintained. Licensees' Reconciliation Detail report reflected EFTs that were more than two years' old that had not cleared the bank and Licensees had no documentation as to whether they actually took place. Transactions that were not actually EFTs were recorded as EFTs in Licensees' records and EFTs that were supposed to be made related to property management fees were not recorded in Licensees' records or withdrawn from Licensees' accounts.

vii. There were nine outstanding deposits (Regions account #3306) from August and September 2012 that were still reflected as outstanding, ranging from $180 to $5,000. Licensees were unaware that the deposits were outstanding and unable to provide an explanation as to their status.

f. On numerous occasions, Licensees disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement in violation of 20 CSR 2250-8.220(1).

8. Licensees submitted a fourth-quarter report from their CPAs to the Commission. This report was not required pursuant to the terms of the June 12, 2013 letter sent after the first audit. However, the report did reveal continuing concerns regarding Licensee's accounts. During the reaudit, funds left in the accounts at Regions Bank were left open so that Licensee and the CPA could reconcile them. Licensee then provided cashier's checks showing that the amount in those accounts was submitted to unclaimed property. Licensees and the CPA acknowledge the funds were unidentified funds. That amount remitted to unclaimed property from Regions account #3306 was $15,548.10 which was the total balance as of December 31, 2014. However, in June 2014, the Commission examiner identified the balance as $12,537.30. Licensees provided no explanation as to the difference of the unidentified balances between June and December 2014. The amount remitted to unclaimed property from Regions account #3322 was $4,646.59, the balance as of December 31, 2014. During the July 2014 reaudit, the Commission examiner identified the balance as $13,233.59 and the account was unreconcilable during the reaudit. Licensees provided no documentation as to the disparity in the July and December account balances. Next, according to the fourth-quarter report, the current property management escrow account at MRV bank, #2194, was out of balance by $4,710.13. Licensees provided a copy of a cashier's check to the state treasurer's office in the amount of $4,710.41 but provided no explanation of the overage. The CPA also states there were a few old outstanding checks reissued or submitted to unclaimed property. Licensees did not provide copies of the reissued checks or funds submitted. As of June 30, 2014, that account had a balance of $32,254.10. There is no explanation as to whom the overage might belong to or any other reasons for the overage. Finally, the security deposit account at MRV bank, #2178, had an unidentified overage in the amount of $545 which was remitted to the State Treasurer's Office of Unclaimed Property. In July 2014, the Commission examiner identified an overage in the combined balance of old and new security deposits in the amount of $20,660.19, including $14,777.55 due to deposits on the books for more than 12 months. The third quarter CPA report had that amount of outstanding deposits reduced to $2,884.94 but the correspondence did not reflect what happened to the remaining $12,000 in deposits. The third quarter report also stated that $2,884.94 was received but never deposited and Licensees did not know why. Licensees also stated that $869.94 of the outstanding deposits were located. However, the report did not address the Commission's request for additional information made to Licensee in November 2014 regarding the third-quarter CPA report and specifically the verification of these deposits.

9. Section 339.040.1, RSMo, states, in relevant part:

1. Licenses shall be granted only to persons who present, and corporations, associations, 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 broker salesperson in such a manner as to safeguard the interest of the public.

10. Section 339.105, RSMo, states, in relevant part:

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

...

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.

11. Section 339.730, RSMo, states, in relevant part:

1. A licensee representing a seller or landlord as a seller's agent or a landlord's agent shall be a limited agent with the following duties and obligations:

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

(2) To exercise reasonable skill and care for the client;

(3) To promote the interests of the client with the utmost good faith, loyalty, and fidelity, including:

(a) Seeking a price and terms which are acceptable to the client, except that the licensee shall not be

obligated to seek additional offers to purchase the property while the property is subject to a contract for sale or to seek additional offers to lease the property while the property is subject to a lease or letter of intent to lease;

(b) Presenting all written offers to and from the client in a timely manner regardless of whether the property is subject to a contract for sale or lease or a letter of intent to lease;

(c) Disclosing to the client all adverse material facts actually known or that should have been known by the licensee; and

(d) Advising the client to obtain expert advice as to material matters about which the licensee knows but the specifics of which are beyond the expertise of the licensee;

(4) To account in a timely manner for all money and property received;

(5) To comply with all requirements of sections 339.710 to 339.860, subsection 2 of section 339.100, and any rules and regulations promulgated pursuant to those sections; and

(6) To comply with any applicable federal, state, and local laws, rules, regulations, and ordinances, including fair housing and civil rights statutes and regulations.

12. Regulation 20 CSR 2250-8.120 states, in relevant part:

...

(3) The escrow or trust account maintained by a broker, as required by the license law, shall be a checking account in a bank, savings and loan or credit union. If the escrow or trust account maintained by the broker is an interest-bearing account, the broker shall disclose in writing to all parties to the transaction that the account is interest-bearing and the disclosure shall indicate who is to receive the interest.

(4) Each broker shall deposit into the escrow or trust account all funds coming into the broker's possession as set out in section 339.100.2(1), RSMo, including funds in which the broker may have some future interest or claim and including, but not limited to, earnest money deposits, prepaid rents, security deposits, loan proceeds and funds paid by or for the parties upon closing of the transaction. No broker shall commingle personal funds or other funds in the broker's escrow account except to the extent provided by section 339.105.1, RSMo. Commissions payable must be removed from the escrow account at the time the transaction is completed. After the transaction is completed, interest payable shall be disbursed to the appropriate party(ies) from the escrow account no later than ten (10) banking days following the receipt of the next statement of the escrow account. When the licensee receives all interest earned, interest payable to a licensee must be removed from the escrow account within ten (10) banking days following the receipt of the next statement of the escrow account.

13. Regulation 20 CSR 2250-8.220(1) states, in relevant part:

> 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.

14. Licensees' conduct, as described in paragraphs 3 through 9 above, including audit violations from both the 2012 and 2014 audits, constitutes cause to discipline Licensees' licenses.

15. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(1), (3), (15), (16) and (19), RSMo, which states in pertinent part:

> 2. The Commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state-licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:
>
> ...
>
> (1) Failure to maintain and deposit in a special account, separate and apart from his or her personal or other business accounts, all moneys belonging to others entrusted to him or her while acting as a real estate broker or as the temporary custodian of the funds of others, 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 any lawful rule adopted pursuant to sections 339.010 to 339.180 and sections 339.710 to 339.860*;
>
> (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;
>
> ...

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

Joint Agreed Disciplinary Order

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

17. The terms of discipline shall include that **Licensee's license shall be on probation for three (3) years.** Licensee Soto's broker associate license, license number 2001010761 and Licensee Soto LLC's real estate association license, license number 2008013886 are hereby placed on PROBATION for three (3) years. During the period of probation, Licensees shall be entitled to practice as a real estate broker associate and real estate association, respectively, provided Licensees adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

Specific Terms

a. Licensees shall pay a civil penalty in the amount of $5,000.00 pursuant to § 339.100.3, RSMo. The civil penalty shall be made payable to Respondent must pay a civil penalty of $5,000 by certified check made payable to the "Missouri Real Estate Commission" and mailed to the Missouri Real Estate Commission, PO Box 1339, Jefferson City, MO 65102-1339. Said check must be postmarked or hand delivered within 60 days of the execution of this Settlement Agreement. Funds received pursuant to this Order shall be handled in accordance with Section 7 of Article IX of the Missouri Constitution and Section 339.205.8, RSMo. Respondent's failure to pay the full amount of the $5,000 civil penalty within sixty days of the effective date of this Order shall constitute a violation of Respondent's disciplinary period.

b. Licensees shall allow the Commission to conduct an examination and re-audit of their real estate records within one year of the effective date of this settlement agreement. The re-audit will cover the period of the prior audit(s) that are the subject of this Settlement Agreement and the period since the end of the prior audit. The purpose of the re-audit will be to assure that Licensees have corrected the

deficiencies and violations in the previous audit(s) and to evaluate Licensees compliance with all relevant provisions of Chapter 339, RSMo, all rules and regulations duly promulgated thereunder, and all local, state and federal laws since the end of the prior audit period. The Commission reserves the right to proceed on any uncorrected deficiencies and violations from the previous audit(s).

c. Licensee Soto shall complete six hours in continuing education courses in the area of property management. Licensee shall complete these hours within one year of the execution of this Settlement Agreement. Licensee shall written submit proof of completion of the six continuing education hours to the Commission within ten business days of completing the education.

General Terms

a. Licensees shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each place of residence and business. Licensees shall notify the MREC in writing within ten days of any change in this information.

b. Licensees shall timely renew Licensee's licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a letter to the MREC. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

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

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

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

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

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

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

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

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

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

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

17. If no contested case has been filed against Licensees, Licensees have the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the licenses of Licensees. If Licensees desire the Administrative Hearing Commission to review this Agreement, Licensees may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.**

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

LICENSEES

Soto Property Management LLC
David E. Soto, owner

David E. Soto

Date June 22, 2015

COMMISSION

Joseph Denkler
Executive Director
Missouri Real Estate Commission

Date 6/30/15