

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE COMMISSION AND ULTIMATE REALTY LLC AND TERRY L. GERLING

Come now Ultimate Realty LLC ("Ultimate Realty") and Terry L. Gerling ("Gerling") (collectively "Licensees") and the Missouri Real Estate Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Ultimate Realty's license as a real estate association and Gerling'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 Ultimate Realty and Gerling acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges against them proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against them; the right to present evidence on their own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against them and, subsequently, the right to a disciplinary hearing before the Commission at which time they may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against their licenses. Being aware of these rights provided them by operation of law, Ultimate Realty and Gerling 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.

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

For the purpose of settling this dispute, Ultimate Realty and Gerling stipulate that the factual allegations contained in this Settlement Agreement are true and stipulate with the Commission that their licenses, numbered 2012013817 (Ultimate Realty) and 2008009779 (Gerling) are subject to disciplinary action by the

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

Commission in accordance with the provisions of Chapter 621 and §§ 339.010-339.205 and 339.710-339.855, RSMo.

Joint Stipulation of Facts 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, Ultimate Realty, holds a real estate association license from the Commission, license number 2012013817. The Commission issued Ultimate Realty's license on May 1, 2012 and it expires June 30, 2020. Licensee's license was current and active at all relevant times herein. Licensee Terry L. Gerling is the designated broker for Ultimate Realty.

3. Licensee, Terry L. Gerling, holds a broker associate license from the Commission, license number 2008009779. The Commission issued Gerling's broker associate license on May 1, 2012. Licensee's license expires June 30, 2020. Licensee Gerling's license was current and active at all relevant times herein.

4. On July 13-16, 20-23, and 27-28, 2015, the Commission conducted an audit of Ultimate Realty. The Commission's audit revealed the following violations:

- a. In violation of sections 339.020 and 339.180.1, RSMo, and regulation 20 CSR 2250-4.070(1), an unlicensed limited liability company, Ultimate Realty, LLC, was acting as a real estate broker.
- b. In violation of section 339.105.1, RSMo, there was a net shortage in the property management escrow account, account ending 1828 ("Account 1828") which was the result of an identified overage of \$3,894.54 for managing property without an agreement, identified shortages of \$5,620.23 (\$5,233.69 in bank fees removed from the account and \$386.54 in negative owner balances) and a net unidentified shortage of \$25,035.15.
- c. In violation of section 339.105.1, RSMo, on numerous instances, Licensee commingled funds, bank service changes and owner contributions, in the property management escrow account.

- d. In violation of section 339.105.1, RSMo, there was a temporary shortage of \$2,310.00 from May 14, 2015 to June 5, 2015 in the property management escrow account as a result of the commingling in that owner funds were deposited into the brokerage operating account.
- e. In violation of section 339.105.1, RSMo, on numerous instances, there were temporary overages in the property management escrow account due to managing property without an agreement.
- f. In violation of section 339.105.1, RSMo, on numerous instances there were temporary shortages in the property management escrow account due to bookkeeping errors.
- g. In violation of section 339.105.1, RSMo, and regulation 20 CSR 2250-8.120(4), there was an identified overage of \$1,169.27 in the sales escrow account, account ending 1967 ("Account 1967") due to commingling excess broker funds.
- h. In violation of section 339.105.1, RSMo, and 20 CSR 2250-8.120(4), on numerous instances, there was commingling in the sales escrow account including excess broker funds and Licensee only used the escrow account for the deposit and payment of sales commissions.
- i. In violation of section 339.105.1, RSMo, and 20 CSR 2250-8.120(4), on numerous instances, there were temporary overages in the sales escrow account in that commissions payable were not removed.
- j. In violation of section 339.730.1(1), a licensee at Ultimate Realty failed to perform the terms of the written agreement with the seller in that a property was advertised for a price, \$64,900.00, other than the listed price, \$64,500.00.
- k. In violation of sections 339.750.1 and 339.780.4, RSMo, on 15 instances, licensees, including Licensee Gerling, acted as dual agents without written authorization from the tenant.
- l. In violation of section 339.770.1, RSMo, and 20 CSR 2250-8.097(1), Licensees modified the Broker Disclosure Form by adding signature lines.
- m. In violation of section 339.780.1, RSMo, and 20 CSR 2250-8.090(5)(A)11, a licensee at Ultimate Realty entered into a buyer agreement on behalf of the broker without written authorization from the designated broker on two instances.

- n. In violation of section 339.780.1, RSMo, and regulation 20 CSR 2250-8.090(9)(L), on nine instances, licensees at Ultimate Realty entered into property management agreements on behalf of the brokerage without written authorization from the designated broker.
- o. In violation of sections 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(B), on three instances, licensees, including Licensee Gerling, used management agreements that did not state when the fee or commission would be paid.
- p. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(G), on four instances a licensee at Ultimate Realty used a management agreement with the landlord did not contain a statement permitting or prohibiting an offer of subagency.
- q. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.200(1), on 11 instances, Licensee Gerling managed property without an agreement.
- r. In violation of section 339.780.3, RSMo, a licensee at Ultimate Realty acted as an agent of the buyer without obtaining a written agency agreement.
- s. In violation of section 339.780.3, RSMo, on 15 instances, licensees at Ultimate Realty, including Licensee Gerling, acted as an agent of the tenant without obtaining a written agency agreement.
- t. In violation of regulation 20 CSR 2250-8.090(4)(A), Licensees' listing agreement did not include an expiration date.
- u. In violation of regulation 20 CSR 2250-8.090(4)(A)11, Licensees' listing agreement did not include the signature of the broker.
- v. In violation of regulation 20 CSR 2250-8.090(9)(A), on four instances, Licensees' management agreement did not properly identify the property in that it did not contain the city or town.
- w. In violation of regulation 20 CSR 2250-8.090(9)(C), Licensees' management agreement did not specify whether security deposits or prepaid rents would be held by the broker or the owner.
- x. In violation of regulation 20 CSR 2250-8.090(9)(C), Licensees' management agreement did not specify whether prepaid rents would be held by the broker or the owner.
- y. In violation of regulation 20 CSR 2250-8.090(9)(L), on two instances, Licensees' management agreement did not contain the signature of the broker or their authorized agent.

- z. In violation of regulation 20 CSR 2250-8.096(1), a licensee at Ultimate Realty made an incorrect disclosure, disclosing as a listing broker when he represented the buyer.
- aa. In violation of regulation 20 CSR 2250-8.096(1)(A)2, on 16 instances, licensees at Ultimate Realty had brokerage relationship disclosures that did not include the source or sources of compensation.
- bb. In violation of regulation 20 CSR 2250-8.096(1)(A)6, on three instances licensees at Ultimate Realty, including Licensee Gerling, had written brokerage relationship disclosures not signed and/or dated by the disclosing licensee.
- cc. In violation of regulation 20 CSR 2250-8.100(1), on seven instances, licensees at Ultimate Realty, including Licensee Gerling, failed to specify all terms and conditions in the offer to purchase including financing on six instances and financing and home warranty on one instance.
- dd. In violation of regulation 20 CSR 2250-8.160(2), on eight instances, Licensee Gerling failed to retain records relating to property management in that Licensee Gerling failed to maintain eight voided checks.
- ee. In violation of regulation 20 CSR 2250-8.220(1), on three instances, Licensee Gerling disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.
- ff. In violation of regulation 20 CSR 2250-8.220(8), on numerous instances, Licensees' records of bank transfers on the property management escrow account did not contain the related transaction.
- gg. At the conclusion of the 2015 audit, the Commission reviewed the audit report at its February 2016 meeting. The Commission made a decision to require the broker to submit quarterly reports for one year and conduct a limited reaudit in 15 months.

5. On May 9-11, 15-18, 21, and 22, 2017, the Commission conducted a reaudit of Ultimate Realty LLC. The Commission's 2017 reaudit revealed the following violations:

- a. In violation of section 339.100.2(3), RSMo, on two instances, Licensee Gerling failed to timely account for money that belonged to others in that Licensees failed to remit funds to two owners, D and M, timely following ceasing management for those owners.
- b. In violation of section 339.100.2(19), RSMo, on three instances, Licensee maintained inaccurate owner's statements. The April 30, 2017 statement for owner D had an incorrect ending balance due to incorrect posting of a late fee. The November 30, 2016 and December 31, 2016 statements for owner M were incorrect due to an incorrect ending balance because of incorrect posting of late fees.
- c. In violation of section 339.105.1, RSMo, there was a net overage of \$6,144.95 in the property management escrow account, account number ending 1828 ("Account 1828"). The overage was partially identified as follows: total identified overages of \$6,687.14 resulting from funds held on properties managed without an agreement (\$6,472.50), funds not timely remitted to non-current owner D (\$200.00) and funds not timely remitted to non-current owner M (\$14.64); and total identified shortages of \$815.00 as a result of an April 30, 2017 negative balance of \$775.00 for property owner JL and a \$40.00 negative balance for owner K. The overage also included an unidentified overage of \$272.81.
- d. In violation of section 339.730.1(1), RSMo, Licensee failed to perform the terms of the written agreement with the landlord in that Licensee removed a different management fee than the management agreement specified for owner C.
- e. In violation of section 339.730.1(2), RSMo, on numerous instances, Licensee collected management fees in excess of fees authorized in the written agreement with the owner in that Licensee charged a \$40.00 application fee to the tenant when the process cost \$15.00 per application and the additional income to Licensees was not authorized in the management agreements or reflected on the owner statements.
- f. In violation of sections 339.750.1 and 339.780.4, RSMo, on five instances, licensees at Ultimate Realty acted as a dual agent without written authorization from the tenant.
- g. In violation of section 339.760.1, RSMo, on eight instances, licensees at Ultimate Realty, including Licensee Gerling, entered into a management agreement which authorized a

relationship that was not identified in the broker's written policy on agency relationships, in that licensees entered into sub-agency agreements.

- h. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.090(9)(B), on four instances, licensees at Ultimate Realty, including Licensee Gerling, had management agreements that did not state when the fee or commission would be paid.
- i. In violation of section 339.780.2, RSMo, and regulation 20 CSR 250-8.090(9)(G), a licensee at Ultimate Realty had a management agreement with a landlord that did not contain a statement permitting or prohibiting an offer of sub-agency.
- j. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.200(1), Licensees managed property without a current written management agreement on numerous instances for the following properties:
 - i. 9728 Calumet Dr. was not listed on owner F's management agreement;
 - ii. 6933 Plymouth was not listed on owner L's management agreement;
 - iii. 1529 Sherman was not listed on owner D's management agreement;
 - iv. 12517 Hillview was not listed on owner AHA's management agreement;
 - v. 6849 Berkridge Ct. was not listed on owner H's management agreement;
 - vi. 1212 Laire was not listed on owner I's management agreement;
 - vii. 101018 Ashbrook and 320 Fork Drive were not listed on owner JD's management agreement;
 - viii. 655 5th Place, 413 Ballman, and 8918 Hilltop were not listed on owner JGP's management agreement;
 - ix. 2217 Osage was not listed on owner JL's management agreement;
 - x. 409 Harrison and 341 St. Louis Ave., were not listed on owner RLM's management agreement;
 - xi. Multiple properties were not listed on owner TMH's management agreement;
 - xii. There was no management agreement for owner H. for 6720 Nashville; and
 - xiii. There was no management agreement for owner W for 385 Moreau Terrace at the time of the audit; however, it was corrected during the audit.

- k. In violation of section 339.780.3, RSMo, on five instances, licensees at Ultimate Realty acted as an agent of the tenant without obtaining a written agency agreement.
- l. In violation of regulation 20 CSR 2250-8.090(9)(A), on two instances, licensees at Ultimate Realty had management agreements that did not properly identify the property in that the agreements did not include the city.
- m. In violation of regulation 20 CSR 2250-8.090(9)(C), Licensees' management agreement did not specify whether security deposits and prepaid rents would be held by the broker or owner.
- n. In violation of regulation 20 CSR 2250-8.090(9)(H), the management agreement of a licensee at Ultimate Realty did not include a statement permitting or prohibiting the designated broker from acting as a dual agent.
- o. In violation of regulation 20 CSR 2250-8.096(1)(A)(2), the written brokerage relationship disclosure for a licensee at Ultimate Realty did not identify the source or sources of compensation.
- p. In violation of regulation 20 CSR 2250-8.096(1)(A)6, on four instances, two licensees at Ultimate Realty used a written brokerage relationship disclosure that was not dated by the disclosing licensee on or before the lease date.
- q. In violation of regulation 20 CSR 2250-8.097(2), Licensees' pre-printed Broker Disclosure Form did not mirror the written office policy on brokerage relationships in that the policy contained the choices of "Seller's, Buyer's, Dual Agency, and Transaction Brokerage" which the preprinted Broker Disclosure Form did not.
- r. In violation of regulation 20 CSR 2250-8.160(1), Licensees failed to retain records on three instances including one property addendum for the RVMB LLC management agreement and two voided checks from Account 1828.
- s. In violation of regulation 20 CSR 2250-8.220(1), on 31 instances, Licensees disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.
- t. At the conclusion of the 2017 reaudit, the Commission determined that the CPA reports were satisfactory with some minor issues noted and corrected. The Commission reviewed the May

2017 reaudit at its August 2017 meeting and sent the broker a letter requiring corrective action.

The broker addressed the issues in the August 2017 letter.

6. On August 13-16, 21-23, 27, 29-30 and September 4-6, 11, and 25, 2018, the Commission conducted a reaudit of Ultimate Realty LLC. The Commission's 2018 reaudit revealed the following violations:
- a. In violation of section 339.100.2(3), RSMo, on six instances, Licensees failed to remit monies that belonged to others (funds related to properties no longer being managed).
 - b. In violation of section 339.100.2(14), RSMo, and regulation 20 CSR 2250-8.090(1), on one instance, a licensee at Ultimate Realty advertised a property without the broker holding a currently effective written listing agreement or other written authorization.
 - c. In violation of section 339.105.1, RSMo, there was a net overage of \$2,483.86 in the property management escrow account, account ending 1828 ("Account 1828") as a result of total identified overages in the amount of \$3,276.54 and total identified shortages of \$1,104.99 as well as a net unidentified overage of \$312.31. The identified overages consisted of: \$804.55 due to managing properties without an agreement; \$2,427.19 due to Licensee failing to remit funds that belonged to others after he no longer managed properties; \$33.00 due to underpayment of management fees to broker; and \$11.80 due to management fees not removed. The identified shortages consisted of: \$69.99 due to negative owner balance; \$845.00 due to property owner M.C. paid twice; and \$190.00 due to overpayment of management fees to broker.
 - d. In violation of section 339.105.1, RSMo, there was a temporary shortage of \$850.00 from November 8, 2017 to November 22, 2017 in Account 1828 due to Licensee paying a leasing commission to licensee in error.
 - e. In violation of section 339.105.1, RSMo, there was a temporary shortage of \$2,250.00 from April 13, 2018 to May 11, 2018 in Account 1828 due to Licensee paying an invoice billed twice to the property owner in error.
 - f. In violation of section 339.105.1, RSMo, there was commingling in the property management account, in that Licensee deposited an owner contribution check into the brokerage's operating account in error.

- g. In violation of section 339.105.1, RSMo, there was a temporary shortage from May 7, 2018 to May 10, 2018 in Account 1828 due to Licensee commingling funds.
- h. In violation of section 339.730.1(1), RSMo, Licensee collected management fees in excess of fees authorized in the written agreement with the owner in that the management agreement, on at least one instance, did not address the issue of application fees.
- i. In violation of section 339.730.1(1), RSMo, Licensee failed to perform the terms of the written agreement with the landlord in that Licensee did not remove the management fees monthly.
- j. In violation of section 339.760.1, RSMo, a licensee at Ultimate Realty entered into a management agreement that authorized a relationship that was not identified in the broker's written policy on agency relationships.
- k. In violation of section 339.780.2, RSMo, and regulation 20 CSR 2250-8.200(1), Licensees managed property on four instances at four locations – 1212 Laire, 6720 Nashville, 10011 Charjean and 275 Francisca – without an agreement. The 1212 Laire and 6720 Nashville locations for which Licensees did not have an agreement were identified in the 2017 reaudit and were not corrected prior to the 2018 audit.
- l. In violation of regulation 20 CSR 2250-8.090(4)(A)14, on three instances, licensees at Ultimate Realty, including Licensee Gerling, did not include all the terms and conditions under which the property could be sold in the listing agreement in that one did not contain the minimum commission, protection period and additional compensation, one did not include the minimum commission, additional compensation and home warranty, and one did not contain the home warranty.
- m. In violation of regulation 20 CSR 2250-8.090(5)(A)13, licensees at Ultimate Realty failed to include all the terms and conditions prescribed by the buyer in the buyer agency agreement, specifically, additional compensation.
- n. In violation of regulation 20 CSR 2250-8.090(9)(C), the management agreement did not specify whether security deposits and prepaid rents would be held by the broker or the owner.
- o. In violation of regulation 20 CSR 2250-8.096(1), an Ultimate Realty licensee's brokerage relationship was not disclosed in writing.

- p. In violation of regulation 20 CSR 2250-8.096(1)(A)2, on two instances, licensees at Ultimate Realty, including Licensee Gerling, did not correctly identify the source of compensation in the written brokerage relationship disclosure.
 - q. In violation of regulation 20 CSR 2250-8.096(1)(A)5, the written brokerage relationship disclosure was not dated by the seller.
 - r. In violation of regulation 20 CSR 2250-8.096(1)(A)6, on two instances, the written brokerage relationship disclosure was not signed and dated by the disclosing licensees at Ultimate Realty, including Licensee Gerling, on or before the contract date.
 - s. In violation of regulation 20 CSR 2250-8.096(1)(A)6, the written brokerage relationship disclosure was not signed and dated by the disclosing licensee.
 - t. In violation of regulation 20 CSR 2250-8.097(2), the broker disclosure form did not mirror the written office policy on broker relationships in that the Missouri Broker Disclosure Form reflected "other" which was not listed in Licensees' office policy.
 - u. In violation of 20 CSR 2250-8.100(1), all the terms and conditions were not specified by a licensee at Ultimate Realty in the offer to purchase in that financing was not specified.
 - v. In violation of regulation 20 CSR 2250-8.150(2), Licensees failed to verify the accuracy of the closing statement in that it did not identify the payees.
 - w. In violation of regulation 20 CSR 2250-8.160(1), Licensees failed to retain a voided check, check number 11929.
 - x. In violation of regulation 20 CSR 2250-8.220(1), on nine instances, Licensees disbursed funds from the property management escrow account when the owner's account balance was not sufficient to cover the disbursement.
 - y. In violation of regulation 20 CSR 2250-8.220(3), Licensees failed to deposit rents within ten banking days.
 - z. In violation of regulation 20 CSR 2250-8.220(6), Licensee did not remove management fees monthly.
7. The Commission's audits also revealed:

- a. During the 2018 reaudit, the Commission's examiner reviewed 13 management agreements that had been examined for compliance with the 2017 audit. Of the 13 agreements, Licensee entered into three new management agreements to address managing property without an agreement and ceased managing two of the properties. The remaining eight agreements were not corrected to address issues of not stating when the fee or commission would be paid and/or the management agreement authorizing a sub-agency relationship not identified in Licensees' written policy on agency relationships.
- b. During the 2018 reaudit the Commission's examiner also reviewed 11 management agreements that had been examined for liabilities in the 2017 audit. There were 18 instances in the 2017 audit for which Licensees were cited for managing without an agreement. As of the 2018 reaudit, Licensee entered into new management agreements for 11 of the properties, ceased managing for five of them but for the remaining two, failed to enter into new management agreements.
- c. During the 2018 audit, the examiner noted that two accounts at Bank of America, account number ending in 1697, which was registered with the Commission in error, and account number ending in 1971, Licensee's operating account, had not been closed with the Commission despite audit violations being cited during the 2017 audit.

8. Section 339.020, RSMo, states, in relevant part:

It shall be unlawful for any person, partnership, limited partnership, limited liability company, association, professional corporation, or corporation, foreign or domestic, to act as a real estate broker, real estate broker-salesperson, or real estate salesperson, or to advertise or assume to act as such without a license first procured from the commission.

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 service charges related to the account.

11. Section 339.180.1, RSMo, states, in relevant part:

It shall be unlawful for any person or entity not licensed under this chapter to perform any act for which a real estate license is required. Upon application by the commission, and the necessary burden having been met, a court of general jurisdiction may grant an injunction, restraining order or other order as may be appropriate to enjoin a person or entity from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a permit or license is required by this chapter upon a showing that such acts or practices were performed or offered to be performed without a permit or license; or

(2) Engaging in any practice or business authorized by a permit or license issued pursuant to this chapter upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any person with, or who is considering obtaining, a legal interest in real property in this state.

12. Section 339.730.1, RSMo, states, in relevant part:

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[.]

13. Section 339.750.1, RSMo, states, in relevant part:

A licensee may act as a dual agent only with the consent of all parties to the transaction. Consent shall be presumed by a written agreement pursuant to section 339.780.

14. Section 339.760, RSMo, states, in relevant part:

Every designated broker who has affiliated licensees shall adopt a written policy which identifies and describes the relationships in which the designated broker and affiliated licensees may engage with any seller, landlord, buyer, or tenant as part of any real estate brokerage activities.

15. Section 339.770.1, RSMo, states, in relevant part:

In a residential real estate transaction, at the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a written agreement for services as described in subdivision (5) of section 339.710, the licensee shall provide that person with a written copy of the current broker disclosure form which has been prescribed by the commission.

16. Section 339.780, RSMo, states, in relevant part:

1. All written agreements for brokerage services on behalf of a seller, landlord, buyer, or tenant shall be entered into by the designated broker on behalf of that broker and affiliated licensees, except that the designated broker may authorize affiliated licensees in writing to enter into the written agreements on behalf of the designated broker.

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.

3. Before or while engaging in any acts enumerated in section 339.010, except ministerial acts defined in section 339.710, a designated broker acting as a single agent for a buyer or tenant shall enter into a written agency agreement with the buyer or tenant. The agreement shall include a licensee's duties and responsibilities specified in section 339.740 and the terms of compensation.

4. Before engaging in any of the activities enumerated in section 339.010, a designated broker intending to act as a dual agent shall enter into a written agreement with the seller and buyer or landlord and tenant permitting the designated broker to serve as a dual agent. The agreement shall include a licensee's duties and responsibilities specified in section 339.750 and the terms of compensation.

17. Regulation 20 CSR 2250-4.070(1) states, in relevant part:

Every partnership, association, or corporation must obtain a separate and distinct real estate broker license before transacting business as a

broker pursuant to Chapter 339, RSMo. If the partnership, association, or corporation wishes to do business under an assumed or fictitious name, it shall first comply with 20 CSR 2250-4.030 regarding registration of the name.

18. Regulation 20 CSR 2250-8.090 states, in relevant part:

(1) A licensee shall not advertise or place a sign upon any property offering it for sale or lease to prospective customers without the written consent of the owner or his or her duly authorized agent.

...

(4) Seller's/Lessor's Agency (Sale/Lease Listing) Agreement.

(A) Every written listing agreement or other written agreement for brokerage services shall contain all of the following:

...

11. The signatures of all owners and the listing broker or listing agent as authorized by the broker;

...

14. All other terms and conditions under which the property is to be sold, leased, or exchanged.

...

(5) Buyer's/Tenant's Agency Agreement.

(A) Every written buyer or tenant authorization shall contain all of the following:

...

11. The signatures of the buyers or tenants and the broker or agent as authorized by the broker;

...

13. All other terms and conditions prescribed by the buyers or tenants.

...

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

(A) Identify the property to be managed;

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

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

...

(G) Contain a statement which permits or prohibits the designated broker from offering subagency (not applicable for transaction broker agreements);

(H) Contain a statement which permits or prohibits the designated broker and/or affiliated licensee from acting as a disclosed dual agent and if permitted, the duties and responsibilities of a dual agent;

...

(L) Contain the signatures of all the owners and the broker or affiliated licensee as authorized by the broker[.]

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

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

(A) Written confirmation must –

...

2. Identify the source or sources of compensation;

...

5. Be signed and dated by the seller/landlord and buyer/tenant. If the landlord has entered into a written property management agreement pursuant to 20 CSR 2250-8.200 – 20 CSR 2250-8.210, the landlord shall not be required to sign the written confirmation;

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

20. Regulation 20 CSR 2250-8.097 states, in relevant part:

(1) In a residential real estate transaction, at the earliest practicable opportunity during or following the first substantial contact by the designated broker or the affiliated licensees with a seller, landlord, buyer, or tenant who has not entered into a brokerage relationship as described in section 339.710.5, RSMo, the licensee shall provide the person with a written copy of the current Broker Disclosure Form prescribed by the Missouri Real Estate Commission. In any event, a licensee shall provide the party that has not entered into a brokerage relationship as described in section 339.710.5, RSMo, the Broker Disclosure Form upon obtaining any personal or financial information or before the signing of a brokerage service agreement, whichever occurs first. If a landlord's agent or transaction broker is conducting property management pursuant to 20 CSR 2250-8.200, the unlicensed office personnel may, in their performance of the duties enumerated in section 339.010.5(a)-(e), RSMo, provide a tenant with a written copy of the current Broker Disclosure Form prescribed by the commission on behalf of the landlord's agent or transaction broker.

(2) The brokerage relationship marked as offered on the Broker Disclosure Form shall correspond to the written office policy by the designated broker pursuant to 339.760.1, RSMo.

21. Regulation 20 CSR 2250-8.100(1) states, in relevant part:

Every licensee shall make certain that all of the terms and conditions authorized by the principal in a transaction are specified and included in an offer to sell or buy and shall not offer the property on any other terms. Every written offer shall contain the legal description or property address, or both, and city where the property is located, or in the absence of, a clear description unmistakably identifying the property.

22. Regulation 20 CSR 2250-8.120(4) states, in relevant part:

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.

23. Regulation 20 CSR 2250-8.150(2) states, in relevant part:

A broker may arrange for a closing to be administered by a title company, an escrow company, a lending institution or an attorney, in which case the broker shall not be required to sign the closing statement; however, it shall remain each broker's responsibility to require closing

statements to be prepared, to review the closing statements to verify their accuracy and to deliver the closing statements to the buyer and the seller or cause them to be delivered. The detailed closing statement shall contain all material financial aspects of the transaction, including the true sale price, the earnest money received, any mortgages or deeds of trust of record, all monies received by the broker, closing agent or company in the transaction, the amount, and payee(s) of all disbursements made by the broker, closing agency or company and the signatures of the buyer and seller.

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

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

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

25. Regulation 20 CSR 2250-8.200 states, in relevant part:

(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.

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

(1) A broker shall establish and maintain a separate escrow account(s) to be designated as a property management escrow account(s), for the deposit of current rents and money received from the owner(s) or on the owner's(s') behalf for payment of expenses related to property management. Before making disbursements from a property management escrow account, a broker shall ensure that the account balance for that owner's(s') property(ies) is sufficient to cover the disbursements.

(3) All money received by a broker in connection with any property management must be deposited within ten (10) banking days to the escrow or trust account maintained by the broker.

(6) Fees or commissions payable to a broker must be withdrawn from a property management escrow account at least once a month unless otherwise agree 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.

(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.

27. Licensees' conduct, as described in paragraphs 4 through 7 above, constitutes cause to discipline Licensees' licenses.

28. Cause exists for the Commission to take disciplinary action against Licensees' licenses under § 339.100.2(3), (14), (15), (16) and (19), RSMo, which states in pertinent part:

2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:

(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;;

(14) Placing a sign on or advertising any property offering it for sale or rent without the written consent of the owner or his or her duly authorized agent;

(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

29. 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.

30. The terms of discipline shall include **Licensee Ultimate Realty shall pay a civil penalty in the amount of \$500.00 pursuant to § 339.100.3, RSMo.** The civil penalty shall be made by certified check 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 effective date 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 \$500.00 civil penalty within sixty days of the effective date of this Order shall constitute a violation of this Order.

The terms of discipline shall also include that **Licensees' licenses shall be placed on probation for a period of three (3) years.** Licensees' licenses are hereby placed on three (3) years' probation. During the period of **probation** on their licenses, Licensees shall be entitled to practice as a real estate association and real estate broker associate provided they adhere to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

Specific Terms

a. For the first year of the disciplinary period, Licensees shall, at their own expense, ensure that quarterly audits of their registered escrow accounts (Account # 1967 and Account # 1971) are

conducted and completed by a certified public accountant (CPA) approved by the Commission. Within 15 calendar days of the effective date of this Settlement Agreement, Licensees shall submit to the MREC in writing a list of at least three CPAs, including name, address, and relationship to Licensees. The Commission may approve one or more of the listed CPAs or may require Licensees, on grounds that are reasonable, to submit additional names for consideration and approval. Licensees shall, at their expense, retain an approved CPA to conduct and complete the quarterly audits for the first year of the disciplinary period. The first such quarterly audit shall begin with the quarter ending March 31, 2019 and continue through and conclude with the quarter ending December 31, 2019. Further, within 30 days of completion of each quarterly audit, the certified public accountant conducting and completing the audit will mail to the MREC by certified mail, return receipt requested, a signed statement from the CPA confirming that his/her firm completed a reconciliation of the account and matched the reconciled balance to the check register and the total of all reported owner and/or tenant balances. All documents necessary to prove 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 necessary to show that all discrepancies were identified and corrected.

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 Licensees' licenses, timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain their licenses in a current and active state. During the disciplinary period, Licensees shall not place their licenses on inactive status as would otherwise be allowed under 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Licensees may surrender their real estate licenses by submitting a Surrender of Licensure Rights form to the MREC along with the original license and any duplicate copies issued to Licensee. If Licensees apply for a real estate license after surrender, Licensees shall be required to requalify as if original applicants. Licensee Gerling would have to apply as an original applicant for a salesperson license. The MREC will not be precluded from basing its

decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

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

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

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

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

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

32. 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.

33. 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.

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

35. 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.

36. 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.

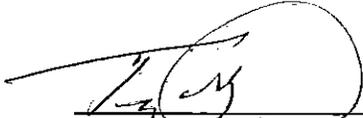
37. Licensees, together with Licensees' heirs and assigns, and Licensees' attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, 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.

38. 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, United States Post Office Building, P.O. Box 1557, 131 West High St., Jefferson City, MO 65102.**

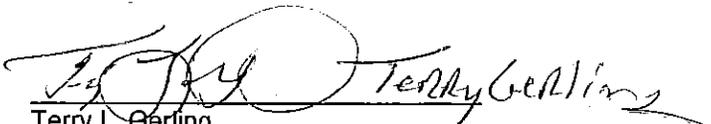
39. If Licensees have requested review, Licensees and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensees' licenses and issue findings of fact and conclusions of law stating that the facts agreed to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

Administrative Hearing Commission for determination, the agreement shall become effective fifteen (15) days following the signature of the Commission's Executive Director.

LICENSEES



Ultimate Realty LLC
Terry L. Gerling, Designated Broker



Terry L. Gerling

Date 3/8/19

COMMISSION



Terry W. Moore
Executive Director
Missouri Real Estate Commission

Date 03-25-19