**BEFORE THE**
**MISSOURI REAL ESTATE COMMISSION**
**STATE OF MISSOURI**

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| **MISSOURI REAL ESTATE COMMISSION,** | ) | |
| | ) | |
| **Petitioner,** | ) | |
| | ) | |
| **v.** | ) | **Case No. 1-16-9 PV** |
| | ) | |
| **HAROLD E WESTERMAN** | ) | |
| **RENTAL INVESTMENT MANAGEMENT SERVICES LLC** | ) | |
| | ) | |
| **Respondents.** | ) | |

**FINDINGS OF FACT, CONCLUSIONS OF LAW**
**AND DISCIPLINARY ORDER**

Pursuant to notice the Missouri Real Estate Commission ("Commission") held a hearing on December 4, 2019, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether Respondents had violated the disciplinary terms of a prior Commission Disciplinary Orders and if so, whether additional discipline of Respondents' licenses was warranted. All of the members of the Commission were present throughout the meeting, except Cynthia Fox. The Commission was represented by Assistant Attorney General Richard Groeneman. On behalf of the Commission, counsel offered the testimony of Burgandy Nelson, Examiner and offered 22 exhibits which were admitted into the record and the testimony of Terry W. Moore, Executive Director. Respondent Harold E. Westerman, having received proper notice and opportunity to appear, did appear in person with his sister, but without legal counsel. Respondent Rental Investment Management Services LLC, having received proper notice and opportunity to appear, did not appear in person or through legal counsel. After being present and considering all of the evidence presented during the

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

I.

## FINDINGS OF FACT

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

2. Harold E. Westerman holds a Broker and three Broker Associate licenses from the Commission, license numbers 1999010288, 2003010127, 2005037909 and 2016009979. Mr. Westerman's Broker (1999010288) and Broker Associate licenses (2003010127 and 2016009979) were current at all times relevant to this proceeding. Mr. Westerman's Broker Associate license (2005037909) expired on June 30, 2018. Respondent Rental Investment Management Services LLC holds a real estate association license, number 2005037345. Rental Investment Management Services LLC was not current at all times relevant to this proceeding. Rental Investment Management Services LLC's license expired on June 30, 2018.

3. On March 15, 2016, the Commission issued a Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and the Missouri Real Estate Commission and Disciplinary Order and Order of The Missouri Real Estate Commission Regarding Issuance of a Probated Real Estate Broker Associates License placing Mr. Westerman's Broker and Broker Associate licenses and Rental Investment Management Services LLC's real estate association license on five (5) years probation. The Disciplinary Order required Respondents to comply with all relevant provisions

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

of Chapter 339 RSMo., as amended; all rules and regulations of the MREC; and all local, state, and federal laws.

4. The relevant terms of the disciplinary period as stated in the Disciplinary Order were:

a. Section II, Paragraph F: Harold E. Westerman and Rental Investment Management Services LLC shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, and all local, state and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Rental Investment Management Services LLC and Harold E. Westerman's licenses as a real estate association and broker under §339.532.2, RSMo., as amended, that accures during the disciplinary period shall also constitute a violation of this Disciplinary Order.

5. To date, Respondent Harold E. Westerman has failed to notify the Commission when he closed a Sales Escrow account, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

6. To date, Respondent Harold E. Westerman has failed to maintain adequate records for Property Mangement Escrow Accounts, and for Security Deposit Escrow Accounts, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

7. To date, Respondent Harold E. Westerman has managed property without an owner or authorized agent signature, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

8. To date, Respondent Harold E. Westerman has used an expired fictitious name and

used a fictitious name that has not been registered with the Missouri Secretary of State office, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

9. To date, Respondent Harold E. Westerman has failed to disclose the brokerage relationship in writing, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

10. To date, Respondent Harold E. Westerman has failed to supervise real estate activities and maintain control over business affairs, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

11. To date, Respondent Harold E. Westerman has failed to account for or remit money within a reasonable time, which provides cause to further discipline Respondents' licenses pursuant to Section 324.042, RSMo., and Section II, Paragraph F of the Disciplinary Order 15-0337 RE.

12. As a result of the foregoing, a Probation Violation Complaint was filed with the Missouri Real Estate Commission alleging that grounds existed for additional disciplinary action against Harold E. Westerman and Rental Investment Management Services LLC's Missouri real estate licenses, pursuant to § 324.042, RSMo.

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

14. On December 4, 2019, pursuant to notice and § 621.110, RSMo., this Commission held a hearing at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri, for the purpose of determining whether the Respondents had violated any terms of the Order, and if so, whether any additional discipline would be imposed against Respondents' licenses. Respondent Harold E. Westerman, did appear in person without legal counsel.

Respondent Rental Investment Management Services LLC, having received proper notice and opportunity to appear, did not appear in person or through legal counsel. Petitioner was represented by Richard Groeneman, Assistant Attorney General, who presented evidence and testimony as stated on page 1 of this Order.

15. All the members of the Commission were present throughout the disciplinary hearing, except Cindy Fox.

## II.

## CONCLUSIONS OF LAW

16. Pursuant to § 324.042, RSMo., the Commission has authority to impose additional discipline against Harold E. Westerman and Rental Investment Management Services LLC, for violating any disciplinary terms previously imposed or agreed to pursuant to the Disciplinary Orders with the licensees.

17. Section 324.042, RSMo., provides:

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

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

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

20. The Commission finds Respondents Harold E. Westerman and Rental Investment Management Services LLC have violated the terms and conditions of the Disciplinary Orders

that became effective February 29, 2016 as a result of the conduct identified in the Findings of Facts set forth above.

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

## III.

## ORDER

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

22. The real estate licenses of Respondent Harold W. Westerman, license numbers 1999010288, 203010127, 2005037909 and 2016009979 and Rental Investment Management Services LLC, license number 2005037345, are hereby **REVOKED.** All evidence of Respondents' licensure shall be immediately returned to the Commission within 30 days of this Order. With the revocation of Respondent Westerman's licenses, he must submit a properly completed Closing of a Real Estate Brokerage/Sole Proprietorship form for each of his companies (i.e. real estate association Rental Investment Management Services LLC (2005037345), real estate association Realestate Investment Management Services LLC (2015042465), real estate association Country Lifestyle Realty LLC (2005015760) and his individual broker/sole proprietorship (1999010288).

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

**So Ordered this 8th day of January 2020.**

Terry Moore

Terry W. Moore, Executive Director
Missouri Real Estate Commission

BEFORE THE
MISSOURI REAL ESTATE COMMISSION

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| MISSOURI REAL ESTATE COMMISSION<br>3605 Missouri Blvd.<br>P.O. Box 1339<br>Jefferson City, Missouri 65102-1339,<br><br>Petitioner,<br><br>v.<br><br>RENTAL INVESTMENT MANAGEMENT SERVICES, LLC,<br>412 SOUTH PUBLIC AVE.<br>P.O. BOX 38<br>CLEVER, MO 63631,<br><br>AND<br><br>HAROLD E. WESTERMAN<br>412 SOUTH PUBLIC AVE.<br>P.O. BOX 38<br>CLEVER, MO 63631,<br><br>Respondents. | ) | No. _____ |

PROBATION VIOLATION COMPLAINT

Petitioner, the Missouri Real Estate Commission ("MREC" or "Commission"), by and through its attorney, the Attorney General of Missouri, states its cause of action against Rental Investment Management Services, LLC and Harold E. Westerman:

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

2. Rental Investment Management Services, LLC is licensed as a real estate association, license number 2005037345. At all times relevant herein, Rental Investment Management Services, LLC real estate association license was current and active.

3. Rental Investment Management Services, LLC, is a Missouri limited liability company, charter no. LC0689449.

4. Rental Investment Management Services, LLC, does business under the fictitious names, Rental Investment Management Services LLC, hereinafter referred to as ("Rental Investment") which is registered with MREC.

5. Harold E. Westerman ("Westerman") holds a real estate broker license, No. 1999010288, and real estate broker associate license, Nos. 2005037909, 2016009979, and 2003010127. At all times relevant herein, Westerman's licenses were current and active. Westerman's aliases are Westerman, Harold E and Westerman Enterprises (Expired in 2009).

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

6. At all times relevant herein, Westerman was the designated broker for Rental Investment; and, as such, Westerman bears responsibility for his own conduct as well as that of Rental Investment.

7. Westerman's real estate licenses are culpable for the conduct and violations revealed by MREC's audit of both Rental Investment and Westerman and the investigation conducted by MREC stemming from complaints received on January 22 and June 7, 2016.

8. References herein to Westerman are also references to Rental Investment.

9. References herein to Rental Investment are also references to Westerman.

10. On or about February 2, 2016, Westerman, Rental Investments and the Missouri Real Estate Commission ("MREC") entered into a settlement agreement concerning violations of §339 RSMo, and the Rules and Regulations of MREC, set forth in Rule 20 CSR 2250-8 ("Settlement Agreement"). A true and accurate copy of the Settlement Agreement is attached to this Probation Violation Complaint as Exhibit 1 and is incorporated as if fully stated herein.

11. The Settlement Agreement placed Westerman's real estate broker and real estate broker-associate licenses and Rental Investment real

estate association license on probation for a period of five (5) years, beginning on February 29, 2016 and expiring on February 29, 2021.

12. On December 1, 2015, in addition to his existing real estate licenses, Westerman applied for an additional real estate broker-associate license with MREC. On or about March 29, 2016, MREC issued an order granting Westerman a probated, real estate broker-associate license, license No. 2016009979, under the authority of §324.038.1, RSMo ("Order"). The period of probation for license No. 2016009979 runs concurrent with Westerman's other licenses probated in the Settlement Agreement. A true and accurate copy of the Order is attached to this Probation Violation Complaint as Exhibit 2 and is incorporated as if fully stated herein.

13. MREC has jurisdiction over this matter pursuant to §324.042, RSMo Supp. 2012, and page 8-9, paragraph 6 of the Settlement Agreement, which provides, in pertinent part: "[r]espondents agree and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred" and page 8, paragraph 19 of the Order, which provides in pertinent part: "[t]he MREC has continuing jurisdiction to hold a hearing to determine if a violation of this joint stipulation has occurred."

14. Section 324.042, RSMo provides

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

15. The Settlement Agreement further provides on page(s) 8-9, paragraph 6, and states in pertinent part:

> "If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action."

16. The Order further provides on page 8, paragraph 19, and states in pertinent part:

> "If any alleged violation of this Order occurs during the disciplinary period, the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred."

17. The terms of the disciplinary period are stated on page 6, paragraph 2(F) of the Settlement Agreement, and states in pertinent part:

> "Respondents shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all

> rules and regulations of the MREC, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other States and territories of the United States. Any cause to discipline Respondents' licenses under Section 339.100.2, RSMo, that occurs during the disciplinary period shall also constitute a violation of the Settlement Agreement."

18. The terms of the disciplinary period are stated on page 7, paragraph G of the Order, and states in pertinent part:

> "Westerman 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 includes the State of Missouri and all other States and territories of the United States."

19. On or about January 22, 2016, MREC received a complaint from Chad Nall ("Nall") concerning Westerman's failure to return security deposits owed to Nall for properties under management with Rental Investment. The complaint was investigated by MREC ("Nall Investigation").

20. On or about June 7, 2016, MREC received a complaint from Jim and Luci March ("March") concerning Westerman's failure to return security deposits owed to March for properties under management with Rental Investment. The complaint was investigated by MREC ("March Investigation").

21. On or about March 6 - 9, 2017, MREC conducted a Probationary Audit of Rental Investment Management Services, LLC, #BN-617235 ("Rental Investment Audit") for the period of January 2016 to December 2016 ("Rental Investment Audit Period").

22. On or about March 6 and 9, 2017, MREC conducted a Probationary Audit of Harold E. Westerman, #BN-617234 ("Westerman Audit") for the period of January 2016 to December 2016 ("Westerman Audit Period").

23. During the Westerman Audit Period, Westerman maintained the following escrow accounts, held by Southern Bank (formerly Peoples Bank of the Ozarks), which was registered with MREC:

a. Sales Escrow Account #: XXX422

24. During the Rental Investment Audit Period, Rental Investment maintained the following escrow accounts, which were registered with MREC:

a. Metropolitan National Bank/Bear State Bank, Property Management Escrow Account # XXXX046.

b. First National Bank, Property Management Escrow Account, Account #XXXX243.

c. First National Bank, Security Deposit Escrow Account, Account # XXXX525.

25. Between February 2013 and October 2015, Rental Investments maintained the following escrow accounts, which were registered with MREC:

d. First National Bank, Property Management Escrow Account, Account #XXXX243.

e. First National Bank, Security Deposit Escrow Account, Account # XXXX525.

Count I
SALES ESCROW ACCOUNT WAS CLOSED WITHOUT NOTIFYING THE COMMISSION

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

27. During the Westerman Audit, on or about December 15, 2015, Southern Bank (formerly Peoples Bank of the Ozarks) closed Westerman's Sales Escrow Account #XXX422 due to inactivity and Westerman failed to notify MREC of the account closure, in violation of Section 339.105.2, RSMo.

28. Section 339.105.2, RSMo, provides:

> Each broker shall notify the commission of his or her intent not to maintain an escrow account, or the name of the financial institution in which each

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

29. Based on the conduct alleged in this count, Westerman and Rental Investment failed to notify the Commission when closing an escrow account, in violation of §339.105.2, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

Count II
BROKER USED AN EXPIRED FICTITIOUS NAME

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

31. During the Westerman Audit, Westerman used Westerman Enterprises, an expired fictitious name, in Westerman's office policy book. Westerman Enterprises was listed by MREC as an alias for Westerman. The fictitious name Westerman Enterprises expired on or about October 17, 2009, due to Westerman failing to renew the fictitious name, as stated in a

Missouri Secretary of State letter dated October 17, 2009. Westerman's use of a fictitious name is a violation of 20 CSR 2250-4.030(1).

32. State Regulation 20 CSR 2250-4.030(1) provides:

> Any broker doing business under any name other than the broker's legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200-417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

33. Based on the conduct alleged in this count, Westerman and Rental Investment used an expired fictitious name, in violation of 20 CSR 2250-4.030(1), providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

## Count III
## FAILED TO MAINTAIN ADEQUATE RECORDS FOR THE PROPERTY MANAGEMENT ESCROW ACCOUNT

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

35. During the Rental Investment Audit, Westerman failed to maintain adequate records concerning his property management escrow account with Metropolitan National Bank/Bear State Bank, Account #

XXXX046. Westerman failed to maintain any record of liabilities, failed to maintain a transaction register, and he failed to prepare or maintain any bank reconciliation records for his property management escrow account # XXXX046, in violation of Section 339.105.3, RSMo, as follows:

a. Westerman failed to provide corresponding receipts or transactions for cash withdrawals and failed to maintain any record of withdrawals from account #XXXX046, to wit:

    1. January 5, 2016 withdrawal of $50.00;
    2. February 5, 2016 withdrawal of $100.00;
    3. February 16, 2016 withdrawal of $500.00;
    4. February 29, 2016 withdrawal of $2000.00;
    5. May 7, 2016 withdrawal of $200.00;
    6. August 8, 2016 withdrawal of $330.00;
    7. August 8, 2016 withdrawal of $990.00

b. On January 21, 2016, Westerman deposited $135.00 into account #XXXX046 with no related transaction record or receipt to determine which property or owner the funds belong to.

c. Westerman made withdrawals from account #XXXX046 which were recorded as commission but no related transaction was

recorded and he failed to provide a detail breakdown for the funds, to wit:

1. January 5, 2016 withdrawal of $50.00;
2. February 5, 2016 withdrawal of $100.00;
3. February 10, 2016 withdrawal of $500.00;

d. On February 29, 2016, Westerman made a withdrawal of $2000.00 from account #XXXX046 with no related transaction record.

e. On May 7, 2016, Westerman made a withdrawal of $200.00 from account #XXXX046 with no related transaction record.

f. On July 28, 2016, Westerman deposited $4,390.00 into account #XXXX046. On August 8, 2016, Westerman made a withdrawal of $330.00 and $990.00 from the account with no related transaction record.

36. Section 339.105.3, RSMo. provides:

> In conjunction with each escrow account 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.

37. Based on the conduct alleged in this count, Westerman and Rental Investment failed to maintain records necessary to determine the adequacy of the property management escrow account, in violation of §339.105.3, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

Count IV

FAILED TO MAINTAIN ADEQUATE RECORDS FOR THE PROPERTY MANAGEMENT ACCOUNT

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

39. During the Rental Investment Audit, Westerman failed to maintain adequate records concerning his property management escrow account with First National Bank, Account # XXXX243. Westerman failed to maintain any record of liabilities, failed to maintain a transaction register, and failed to prepare or maintain any bank reconciliation records for his property management escrow account, in violation of Section 339.105.3, RSMo, as follows:

a. Westerman withdrew funds that were recorded as commission or fee and he failed to record the related transaction or provide a detailed breakdown for the funds withdrawn, to wit:

1. Commission on January 25, 2016 for $500.00;
2. Commission on February 12, 2016 for $200.00;
3. Commission on March 14, 2016 for $1,000.00;
4. Fee and commission on April 26, 2016 for $500.00;
5. Fee on April 26, 2016 for $500.00;
6. Commission on May 19, 2016 for $200.00;
7. Commission on May 19, 2016 for $500.00;
8. Commission on May 31, 2016 for $500.00;
9. Commission on June 17, 2016 for $750.00;
10. Commission on July 7, 2016 for $350.00;
11. Commission on July 25, 2016 for $500.00;
12. Commission on August 16, 2016 for $750.00;
13. Commission on August 30, 2016 for $500.00;
14. Commission on September 19, 2016 for $300.00;
15. Commission on September 25, 2016 for $300.00;
16. Commission on October 6, 2016 for $500.00;
17. Commission on October 13, 2016 for $200.00;

18. Commission on December 26, 2016 for $250.00.

b. December of 2016 owner statement for client The Storage Shed noted total income of $1,530.00, which was distributed by check #1226. Westerman's prepared owner statement showed an owner distribution of $3,318.50.

c. Westerman made cash withdrawals on August 1, 2016 for $500.00 and on August 3, 2016 for $80.00 from the account without a corresponding receipt/invoice or a related transaction record.

d. Westerman made cash withdrawal on December 6, 2016 for $400.00 from the account without a corresponding receipt/invoice or a related transaction record.

e. Westerman failed to maintain adequate records concerning service charges and fees for checks charged to the account on May 18, 2016 for $3.00, October 26, 2016 for $16.02, and November 17, 2016 for $6.00 (two $3.00 charges).

f. Westerman failed to maintain record of deposits, or deposit transactions records for deposits made into the account, it is unknown which property or owner the following funds belonged to, to wit:

1. January 5, 2016 deposit of $5,015.00;
2. February 2, 2016 deposit of $3,775.00;
3. March 1, 2016 deposit of $2,000.00;
4. June 27, 2016 deposit of $500.00;
5. June 27, 2016 deposit of $30.00;
6. August 17, 2016 deposit of $197.50;
7. December 15, 2016 deposit of $900.00;

g. On August 18, 2016, Westerman issued a security deposit refund of $1,000.00, check #1160, for property on Creekside payable from his property management escrow account at First National Bank, Account # XXXX243, and not his security deposit escrow account.

h. Westerman failed to properly maintain and account for income and expenses in owner statements, to wit:

1. Property Management Invoice for 1135 E. Westchester for property owned by Matt Rodgers for the month of June 2016, showed he was paid $844.00 but check #1119 shows he was paid $855.00.
2. Property Management Invoice for 2631 E. Loren St. for 2016 and invoiced on January 31, 2017, owned by

Dustin Mennenga, shows the net paid to client was $7,645.00 but the total from paid column is $7,670.00.

3. Property Management Invoice for 5518 S. Daniel for 2016 and invoiced on January 31, 2017, owned by Lisa Rose, shows the net paid to the client was $7,560.00 but the total from paid column is $7,537.50.

4. Property Management Invoice for 5520 S. Daniel for 2016 and invoiced on January 31, 2017, owned by Lisa Rose, shows the net paid to the client was $4,018.30 but the total from paid column is $4,762.50.

5. Property Management Invoice for 2740 S. Vincent, for 2016 and invoiced on January 31, 2017, owned by Jeannette Schweke, shows the net paid to the client was $9,467.05 but the total from paid column is $9,252.05.

6. Property Management Invoice for 1460 E. University Street, for 2016 and invoiced on January 31, 2017, owned by Pat Roberts, shows the net paid to the client was $7,503.00 but the total from paid column is $7,542.60.

7. Property Management Invoice for 1135 E. Westchester owned by Matt Rodgers, shows the net paid to the client was $9,670.00 but the total from paid column is $9,659.00.

8. Property Management Invoice for 4857 Quail Street, for 2016 and invoiced on January 31, 2017, owned by Michael Lindskog, shows the net paid to the client was $8,868.12 but the total from paid column is $8,765.00.

i. Westerman failed to issue accurate owner statements which included an itemized list of monthly expenses and the checks or disbursements for expenses paid did not correlate with the amount on the owners statement, to wit:

1. Property Management Invoice for August of 2016 for 5520 S. Daniel owned by Lisa Rose, shows expenses of $206.70 for the month but actual expenses for the month was $286.70.

2. Property Management Invoice for December of 2016 for 4857 Quail Ct owned by Michael Lindskog, shows

expenses of $744.00 for the month but actual expenses for the month was $826.88.

3. Property Management Invoice for November of 2016 for 118 2nd Street owned by Ronnie Gillespie, shows expenses of $159.00 for the month but actual expenses for the month was $300.00.

40. Section 339.105.3, RSMo. provides:

> In conjunction with each escrow account 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.

41. Based on the conduct alleged in this count, Westerman and Rental Investment failed to maintain records necessary to determine the adequacy of the property management escrow account, in violation of §339.105.3, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

Count V

FAILED TO MAINTAIN ADEQUATE RECORDS FOR THE SECURITY DEPOSIT ESCROW ACCOUNT

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

43. During the Rental Investment Audit, Westerman failed to maintain adequate records concerning his security deposit escrow account with First National Bank, Account # XXXX525. Westerman failed to maintain any type of transaction register or receipts and failed to prepare or maintain bank reconciliation, in violation of Section 339.105.3, RSMo, as follows:

a. Westerman failed to maintain record of deposits, or deposit transaction records for deposits made into the account, to wit:

    1. April 26, 2016 deposit of $500.00;
    2. May 19, 2016 deposit of $500.00;
    3. November 7, 2016 deposit of $50.00;
    4. December 1, 2016 deposit of $7,164.00

b. On October 19, 2016, Westerman made a $625.00 cash withdrawal for the return of a deposit and he failed to indicate which property or owner the cash withdrawal was for and he failed to maintain a corresponding receipt or record of the withdrawal.

c. On November 22, 2016, Westerman made a $7,164.00 cash withdrawal and on December 1, 2016 he made a $7,164.00 deposit and he failed to maintain a transaction record for the withdrawal or the deposit.

d. The property management agreement, for property located at 5518-5520 S. Daniel Street, requires the owner to hold the security deposit for the property. The security deposit liability list for Westerman failed to show if the broker or the owner was holding the security deposits for the S. Daniel Street property.

e. Westerman held the security deposit of $900.00 for 4857 Quail Ct. On December 21, 2016, Westerman returned only $450.00, check #1222, of the security deposit to the tenet. Westerman failed to retain receipts or records for disbursement of the remaining $450.00 of the security deposit to the tenet.

44. Section 339.105.3, RSMo. provides:

> In conjunction with each escrow account 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.

45. Based on the conduct alleged in this count, Westerman and Rental Investment failed to maintain records necessary to determine the adequacy of the security deposit escrow account, in violation of §339.105.3, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order..

## Count VI
## MANAGED PROPERTY WITHOUT AN OWNER OR AUTHORIZED AGENT SIGNATURE

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

47. During the Rental Investment Audit, Westerman managed properties without a signed property management agreement, in violation of Section 339.780.2, RSMo and 20 CSR 2250-8.200(1), as follows:

a. Westerman managed property located at 1460 E. University, owned by Roberts, with an unsigned property management agreement. Westerman managed the property based on a prepared property management invoice for the property and income payments made to the property owner.

b. Westerman managed property located at 2631 E. Loren St., owned by Mennenga, without a property management

agreement. Westerman managed the property based on a $900.00 security deposit he made on February 16, 2016, a prepared property management invoice for the property, a residential lease, and income payments made to the property owner.

c. Westerman managed property located at 1135 E. Westchester, owned by Rodgers, without a property management agreement. Westerman managed the property based on a prepared property management invoice, a residential lease, and income payments made to the property owner.

d. Westerman managed property located at 1950 S. Collinson, owned by Rose, without a property management agreement. Westerman managed the property based on a prepared property management invoice for the property and made a payment for services rendered on the property.

48. Section 339.780.2, RSMo. provides:

> 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.

49. 20 CSR 2250-8.200(1), provides

> 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 or intended to result in the lease or rent, or show that property to prospective renters or leases 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 owners authorized agent.

50. Based on the conduct alleged in this count, Westerman and Rental Investment managed property without a written property management agreement or without an owner or authorized agent(s) signature, in violation of §339.780.2, RSMo, and 20 CSR 2250-8.200(1), providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

## Count VII
## USED A FICTITIOUS NAME NOT REGISTERED WITH MISSOURI SECRETARY OF STATE

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

52. During the Rental Investment Audit, Westerman used fictitious names not registered with the Missouri Secretary of State, in violation of 20 CSR 2250-4.030(1), as follows:

a. Westerman managed property located at 3023 N. Pierce Ave, and in Paragraph 21 of the property management agreement he uses the fictitious name of "RIMS". RIMS is not a fictitious name registered with the Missouri Secretary of State.

b. Westerman managed property located at 4857 S. Quail Ct. and in Paragraph 2 of the Rental Lease he uses the fictitious name of RIMS, LLC. RIMS, LLC is not a fictitious name registered with the Missouri Secretary of State.

c. Westerman managed property located at 6312 Shade Tree Lane and in Paragraph 2 of the Rental Lease he uses the fictitious name of RIMS, LLC. RIMS, LLC is not a fictitious name registered with the Missouri Secretary of State.

d. Westerman managed property located at 3225 S. Creekside Drive and in Paragraph 2 of the Rental Lease he uses the

fictitious name of RIMS, LLC. RIMS, LLC is not a fictitious name registered with the Missouri Secretary of State.

53. State Regulation 20 CSR 2250-4.030(1) provides:

> Any broker doing business under any name other than the broker's legal name or any entity doing business under any name other than the name registered with the secretary of state, shall first comply with the provisions of sections 417.200-417.230, RSMo on the registration of fictitious names and shall furnish the commission a copy of the registration within ten (10) days of receipt of the official registration from the secretary of state.

54. Based on the conduct alleged in this count, Westerman and Rental Investment used fictitious names which were not registered with the Missouri Secretary of State, in violation of 20 CSR 2250-4.030(1), providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

## Count VIII
## FAILED TO DISCLOSE THE BROKERAGE RELATIONSHIP IN WRITING

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

56. During the Rental Investment Audit, Westerman failed to disclose in writing, the brokerage relationship in either a residential or rental lease, in violation of 20 CSR 2250-8.096(1), to wit:

1. Residential Lease for property located at 3023 N. Pierce;
2. Residential Lease for property located at 5520 S. Daniel;
3. Rental Lease for property located at 4857 S Quail Ct.;
4. Residential Lease for property located at 6312 Shade Tree Lane;
5. Residential Lease for property located at 3225 S. Creekside Drive;
6. Rental Lease for property located at 5518 Daniel.

57. State Regulation 20 CSR 2250-8.096(1), provides:

> 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 relationship 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.

58. Based on the conduct alleged in this count, Westerman and Rental Investment failed to disclose in writing the brokerage relationship in writing, in violation of 20 CSR 2250-8.096(1), providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

**Count IX**

**FAILED TO MAINTAIN ADEQUATE RECORDS FOR THE SECURITY DEPOSIT ESCROW ACCOUNT**

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

60. During the Investigation, it was determined that J. Ivanov, a broker-salesperson for Rental Investments, failed to deposit money received for security and pet deposits for some properties under management by Rental Investments, in the brokerage security deposit escrow account.

61. Westerman, as the designated broker for Rental Investments, failed to maintain books, records, or other necessary documents for Rental Investments security deposit escrow account, account #XXXX525 at First National Bank, to determine if security and pet deposits were being deposited into the account and the loss which resulted from his failure to maintain

book, records, or other necessary documents to discovery the loss, in violation of Section 339.105.3, RSMo, as follows:

a. In October of 2014, $850.00 security deposit was paid and received by Ivanov for 1614 West Whiteside, but was never deposited into Rental Investment's Security Deposit Escrow Account.

b. In October of 2014, $1,000.00 security deposit and a $200.00 pet deposit was paid and received by Ivanov for 5581 S. Michigan but was never deposited into Rental Investment's Security Deposit Escrow Account.

c. In May of 2015, $625.00 security deposit was paid and received by Ivanov for 816 N. Prospect, but was never deposited into Rental Investment's Security Deposit Escrow Account.

d. In May of 2014, $600.00 security deposit and a $200.00 pet deposit was paid and received by Ivanov for 816 N. Prospect but was never deposited into Rental Investment's Security Deposit Escrow Account.

e. In December of 2013, $500.00 security and pet deposit was received by Ivanov for 816 N. Prospect but was never deposited into Rental Investment's Security Deposit Escrow Account.

f. In February of 2015, $925.00 security deposit was paid to Ivanov for 2631 E. Loren but was never deposited into Rental Investment's Security Deposit Escrow Account.

g. In April of 2014, $700.00 security deposit was received by Ivanov for 3023 N. Pierce but was never deposited into Rental Investment's Security Deposit Escrow Account.

h. In July of 2015, $1,395.00 security deposit was received by Ivanov for 5716 S. Clay but was never deposited into the Rental Investment's Security Deposit Escrow Account.

i. In July of 2015, $1,195.00 security deposit was received by Ivanov for 3760 S. Fort but was never deposited into the Rental Investment's Security Deposit Escrow Account.

62. Section 339.105.3, RSMo , provides in pertinent part:

> 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.

63. Based on the conduct alleged in this count, Westerman and Rental Investment failed to maintain books, records, and other necessary

documents so that the adequacy of the account may be determined at any time, in violation of §339.105, RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

**Count X**

**FAILED TO SUPERVISE THE REAL ESTATE ACTIVITIES**

64. MREC realleges and incorporates by reference paragraphs 1 through 25 and paragraphs 59 through 63 as though fully set forth herein.

65. Westerman failed to supervise and oversee the real estate activities of J. Ivanov, who was a licensed broker-salesperson with Rental Investments, specifically J. Ivanov's failure to deposit security and pet deposits into the brokerage's security deposit escrow account, which resulted in a shortage of funds in the account to cover payment to property owners, in violation of 20 CSR 2250-8.020(1).

66. State Regulation 20 CSR 2250-8.020(1), provides in pertinent part:

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

shall not be held responsible for inadequate supervision if:

(A) A licensed or unlicensed person violates a provision of Chapter 339, RSMo or the rules for it in conflict with the supervising broker's specific written policies or instruction;

(B) Reasonable procedures have been established to verify that adequate supervision was being performed;

(C) The broker, upon learning of the violation, attempted to prevent or mitigate the damage;

(D) The broker did not participate in the violation;

(E) The broker did not ratify the violation; and

(F) The broker did not attempt to avoid learning of the violation.

67. Based on the conduct alleged in this count, Westerman and Rental Investment failed to supervise the real estate activities of J. Ivanov, an individual associated with the brokerage, in violation of 20 CSR 2250-8.020(1), providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

## Count XI
## FAILED TO MAINTAIN CONTROL OVER BUSINESS AFFAIRS

68. MREC realleges and incorporates by reference paragraphs 1 through 25 and paragraphs 59 through 67 as though fully set forth herein.

69. Westerman failed to control, or only nominally controlled, the business affairs of Rental Investments under his broker license, especially when it came to the real estate activities of J. Ivanov, because of his lack of control, she was able to keep the security and pet deposits, instead of depositing same in the brokerage security deposit escrow account, which caused a loss of money to both Rental Investment and the individual property owners, in violation of 20 CSR 2250-8.020(2)(B).

70. State Regulation 20 CSR 2250-8.020(2), provides in pertinent part:

> A broker shall permit licensed and unlicensed persons affiliated with the broker to:
>
> (B) Where the broker has no control or only nominal control of the business affairs conducted under the broker's license or is only nominally associated with the business.

71. Based on the conduct alleged in this count, Westerman and Rental Investment failed to control, or only nominally controlled, the real estate activities of J. Ivanov, an individual associated with the brokerage, in violation of 20 CSR 2250-8.020(2)(B), providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

**Count XII**

## FAILED TO ACCOUNT FOR OR REMIT MONEY WITHIN A REASONABLE TIME

72. MREC realleges and incorporates by reference paragraphs 1 through 25 and paragraphs 59 through 63 as though fully set forth herein.

73. Westerman, as the designated broker for Rental Investments, failed to account for or to remit moneys held by, or which came into the possession of, Rental Investments through their management of property, within a reasonable amount of time, in violation of Section 339.100.2(3), RSMo, as follows:

a. In October of 2014, $850.00 security deposit for 1614 West Whiteside, which property was owned by C. Nall, and never deposited into the Security Deposit Escrow Account.

b. In October of 2014, $1,000.00 security deposit and a $200.00 pet deposit for 5581 S. Michigan, which property was owned by C. Nall and never deposited into the Security Deposit Escrow Account.

c. In May of 2015, $625.00 security deposit for 816 N. Prospect, which property was owned by J and L March and never deposited into the Security Deposit Escrow Account.

d. In May of 2014, $600.00 security deposit and a $200.00 pet deposit for 816 N. Prospect, which property was owned by J and L March and never deposited into the Security Deposit Escrow Account.

e. In December of 2013, $500.00 security and pet deposit for 816 N. Prospect, which property was owned by J and L March and never deposited into the Security Deposit Escrow Account.

f. In February of 2015, $925.00 security deposit for 2631 E. Loren, which property was owned by D. Mennega and never deposited into the Security Deposit Escrow Account.

g. In April of 2014, $700.00 security deposit for 3023 N. Pierce, which property was owned by W. Allman and never deposited into the Security Deposit Escrow Account.

h. In July of 2015, $1,395.00 security for 5716 S. Clay, which property was owned by RERT MO 1, LLC and never deposited into the Security Deposit Escrow Account.

i. In July of 2015, $1,195.00 security deposit for 3760 S. Fort, which property was owned by RERT MO 1, LLC and never deposited into the Security Deposit Escrow Account.

74. Section 339.100.2(3), RSMo provides:

> 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[.]

75. Based on the conduct alleged in this count, Westerman and Rental Investment failed to account for, or to remit money, which belonged to others, in violation of §339.100.2(3), RSMo, providing cause to discipline their real estate licenses pursuant to paragraph 2(H) of the Settlement Agreement and paragraph G of the Order.

76. The conduct of Rental Investment and Westerman, individually and collectively, as alleged in each count of this Complaint, individually and collectively, constitutes untrustworthy, improper, and/or fraudulent business dealings and/or demonstrates bad faith and/or gross incompetence, providing cause to discipline the real estate licenses of Westerman and Rental Investment pursuant to § 339.100.2(16) and (19), RSMo.

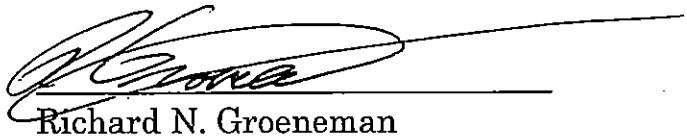
77. The conduct of Rental Investment and Westerman, individual and collectively, as alleged in each count of this Complaint, individually and collectively demonstrates that Rental Investment and Westerman are not competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public, which are grounds for the MREC to refuse to issue a license under § 339.040.1, RSMo, providing cause

to discipline the real estate licenses of Rental Investment and Westerman pursuant to § 339.100.2(16), RSMo.

WHEREFORE, Petitioner respectfully requests MREC to conduct a hearing in this cause to determine that a violation(s) occurred and may impose disciplinary action under §324.042, RSMo, for the violations noted above, and for other such relief as MREC deems just and proper.

Respectfully submitted,

**ERIC S. SCHMITT**
Attorney General



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**Attorneys for Petitioner**

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED
MAR 01 2016
ADMINISTRATIVE HEARING COMMISSION

| | | |
|---|---|---|
| MISSOURI REAL ESTATE COMMISSION | ) | |
| | ) | |
| Petitioner, | ) | |
| | ) | |
| v. | ) | No. 15-0337 RE |
| | ) | |
| RENTAL INVESTMENT MANAGEMENT SERVICES, L.L.C., | ) | |
| | ) | |
| and | ) | |
| | ) | |
| HAROLD WESTERMAN, | ) | |
| | ) | |
| Respondents. | ) | |

**JOINT MOTION FOR CONSENT ORDER,**
**JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,**
**WAIVER OF HEARINGS**
**BEFORE THE ADMINISTRATIVE HEARING COMMISSION**
**AND THE MISSOURI REAL ESTATE COMMISSION,**
**AND DISCIPLINARY ORDER**

Respondents Rental Investment Management Services, LLC ("RIMS") and Harold Westerman ("Westerman") (hereby collectively referred to as "Respondents") and Petitioner the Missouri Real Estate Commission ("MREC") enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Real Estate Commission, and Disciplinary Order* ("Joint Stipulation") for the purpose of resolving



EXHIBIT
1

the Complaint filed against Respondents. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("Commission"), pursuant to 1 CSR 15-3.446(4), and pursuant to the terms of § 536.060, RSMo[1], as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the MREC pursuant to § 621.110, RSMo Supp. 2013 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondents acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Respondents may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC. Being aware of these rights

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

provided Respondents by operation of law, Respondents knowingly and voluntarily waive each and every one of these rights and freely enters into this Joint Stipulation. Respondents further agree to abide by the terms of this document as they pertain to them.

Respondents acknowledge that they received a copy of the Complaint in this case, which was filed with the Commission on March 13, 2015. The parties stipulate that the factual allegations contained in this Joint Stipulation are true and stipulate that Respondent Westerman's licenses as a real estate broker/associate, Nos. 1999010288, 2003010127, and 2005037909, and RIMS' license as a real estate association, license no. 2005037345, are subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo, as amended and § 339.100.2, RSMo Supp. 2013.

## I. JOINT STIPULATION

Based upon the foregoing, the MREC and Respondents jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

### JOINT PROPOSED FINDINGS OF FACT AND JOINT PROPOSED CONCLUSIONS OF LAW

The parties hereby incorporate this Commission's December 14, 2015, Order

finding cause for discipline under Section 339.100, RSMo, Supp. 2013 based on the findings of fact set forth therein.

## II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of Respondents' licenses as a real estate broker, broker associate and a real estate association, subject to the following terms and conditions, and entered by the MREC in this matter under the authority of §§ 536.060 and 621.110, RSMo Supp. 2013. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Respondents' licenses are on probation.** Respondents' licenses as a real estate broker, broker associate, and real estate association licenses are hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Respondents shall be entitled to practice as a real estate broker, broker associate, or real estate association under Chapter 339, RSMo, as amended, provided Respondents adheres to all the terms of this agreement.

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

   (A) Respondents shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each

place of residence and business. Respondents shall notify the MREC in writing within ten (10) days of any change in this information.

(B) Respondents shall timely renew their real estate licenses, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain their licenses in a current and active status. During the disciplinary period, Respondents shall not place their real estate licenses on inactive status as would otherwise be allowed under or 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Respondents may surrender their real estate licenses by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Respondents apply for a real estate license after surrender, Respondents shall be required to requalify as if an original applicant and the 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) Respondents shall meet in person with the MREC or its representative on any business day, during business hours, and

either at Respondents' place of business or at MREC's place of business as required by the MREC or its designee upon notification from the MREC or its designee. Any exceptions would be made by mutual agreement of the parties. Said meetings will otherwise be at the MREC's discretion and may occur periodically during the probation period.

(D) Respondents shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

(E) During the probationary period, Respondents shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Settlement Agreement.

(F) Respondents 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. Any cause to discipline Respondents' licenses under Section 339.100.2, RSMo, that occurs

during the disciplinary period shall also constitute a violation of this Settlement Agreement.

(G.) Respondent Westerman shall report to the MREC each occurrence of Westerman's 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.

(H) Broker Acknowledgement. If at any time during the disciplinary period Respondent Westerman wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Respondents must obtain the Broker Acknowledgement form from the MREC.

(I) If at any time during the disciplinary period Respondent Westerman sells RIMS, Westerman and RIMS must submit proof to the MREC that Westerman provided notice to the purchaser that RIMS' real estate association license is under probation and the terms of probation.

(J) Upon the expiration of the disciplinary period, the license of Respondents shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondents have violated any term or condition of this Joint Stipulation, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate under § 324.042, RSMo.

3. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Joint Stipulation without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

4. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning any future violations by Respondents of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

5. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the MREC or may be discovered.

6. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be

held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Respondents agree and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

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

8. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation 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.

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

10. Respondents, together with their heirs, assigns, agents, partners, shareholders, officers, directors, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any

claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

## III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the complaint filed by the MREC in the above-captioned cause.

RESPONDENT

Harold E Westerman 2/26/16

Harold Westerman Date

By: Harold E Westerman 2/26/16

Rental Investment Management Services, LLC Date

Name:

Title:

PETITIONER

Missouri Real Estate Commission

By: Joseph Denkler 2/29/16.

Joseph Denkler Date

Executive Director

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ATTORNEYS AT LAW, P.C.

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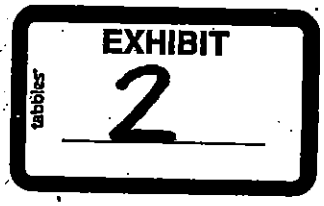
ATTORNEYS FOR PETITIONER

BEFORE THE
MISSOURI REAL ESTATE COMMISSION




In the matter of the application of )
)
**HAROLD E. WESTERMAN** )
)
Applicant )

**ORDER OF THE MISSOURI REAL ESTATE COMMISSION REGARDING ISSUANCE OF A PROBATED REAL ESTATE BROKER-ASSOICATE LICENSE TO HAROLD E. WESTERMAN**

The Missouri Real Estate Commission ("MREC") hereby issues its ORDER granting a PROBATED real estate broker-associate license to Harold E.Westerman ("Westerman") pursuant to the provisions of § 324.038, RSMo[1]. As set forth in § 324.038, RSMo, Westerman may submit a written request for a hearing to the Administrative Hearing Commission seeking review of the MREC's decision to issue a probated real estate broker-associate license. Such written request must be filed with the Administrative Hearing Commission within 30 days of the date of delivery or mailing by certified mail of this Order. The written request should be addressed to the Administrative Hearing Commission, Room 640, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102-1557. If no written request for review is filed with the Administrative Hearing Commission within the 30-day period, the right to seek review of the MREC's decision shall be considered waived.

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I

## FINDINGS OF FACT

Based upon the foregoing, the MREC hereby states:

1. The MREC is an agency of the State of Missouri created and existing pursuant to § 339.120, RSMo, for the purpose of executing and enforcing the provisions of § 339.010 to 339.205 and § 339.710 to 339.860, RSMo, and the regulations promulgated thereunder, relating to real estate salespersons and brokers.

2. Harold E. Westerman is a natural person residing at the address of 412 S. Public Avenue, Clever, MO 65631.

3. On or December 1, 2015, the MREC received Westerman's application for an additional real estate broker-associate license ("Application") with Real Estate Investment Management Services, LLC, 412 S. Public Avenue, Clever, Missouri.

4. On his Application, Section 1B, question B, Westerman was asked if he had "ever had a real estate application denied or your real estate license suspended, revoked, placed on probation, or otherwise disciplined in Missouri or any other state or jurisdiction? Check yes if NOT previously disclosed to this Commission and provide name of state or jurisdiction, reason for denial or discipline and approximate dates on a separate sheet." Westerman responded, "NO" to Section 1B, question B.

5. On or about March 15, 2016, the Administrative Hearing Commission (AHC) entered its Consent Order in the case of *Real Estate Commission v. Rental*

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

*Investment Management Services, LLC and Harold Westerman*, Case No. 15-0337RE. In its Consent Order, the AHC found that the parties entered into and stipulated to the Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings and Disciplinary Order. Therefore, the AHC incorporated the Findings of Fact and Conclusions of Law into its Consent Order, adopted them as stipulated and concluded that the licenses were subject to discipline pursuant to Section 339.100.2(3) and (15), RSMo.

6. The Disciplinary Order placed Rental Investment Management Services LLC real estate association license and Westerman's real estate broker associate licenses on probation for a period of five years.

II

**CONCLUSIONS OF LAW**

7. As a result of the conduct giving rise to the AHC's Consent Order adopting the parties' Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings and Disciplinary Order placing Westerman's broker associate licenses and Rental Investment Management LLC's real estate association license on five years' probation, identified in Section I herein, cause exists for the MREC to deny Westerman's application for an additional real estate broker-associate license pursuant to § 339.080.1 RSMo, which provides: "The commission may refuse to examine or issue a license to any person known by it to be guilty of any of the acts or practices specified in subsection 2 of section 339.100, . . . ."



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8. As a result of the conduct giving rise to the AHC's Consent Order adopting the parties' Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings and Disciplinary Order placing Westerman's broker associate licenses and Rental Investment Management LLC's real estate association license on five years' probation, identified in Section I herein, cause exists for the MREC to deny Westerman's application for an additional real estate broker-associate license pursuant to the provisions of §§ 339.100.2(16) and (19), RSMo, which states:

> 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621, RSMo, against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered his or her individual or entity license for any one or any combination of the following acts:
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> ...
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> (16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;
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> ...
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> (19) Any other conduct which constitutes untrustworthy, improper or fraudulent business dealings, demonstrates bad faith or incompetence, misconduct, or gross negligence[.]

9. Section 339.040.1 RSMo, provides that licenses shall be issued only to persons of good moral character who bear a good reputation for honesty, integrity, and fair dealing and who are competent to transact the business of a real estate broker-associate in a manner so as to safeguard the public's interest.

10. As a result of the conduct giving rise to the AHC's Consent Order adopting the parties' Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings and Disciplinary Order in Section I herein, Westerman has engaged in conduct that adversely affect his moral character, his reputation, and his fitness and qualifications to practice as a real estate broker-associate.

11. As an alternative to refusing to issue a license, the MREC may, at its discretion, issue a license subject to probation, pursuant to § 324.038.1 RSMo, which provides:

> Whenever a board within or assigned to the division of professional registration, including the division itself when so empowered, may refuse to issue a license for reasons which also serve as a basis for filing a complaint with the administrative hearing commission seeking disciplinary action against a holder of license, the board, as an alternative to refusing to issue a license, may at its discretion, issue to an applicant a license subject to probation.

12. The MREC issues this Order in lieu of denial of Westerman's application for an additional real estate broker-associate license. The MREC has determined that this Order is necessary to ensure the protection of the public.

III

**TERMS AND CONDITIONS**

13. Based on the foregoing, the Missouri real estate broker-associate license issued to Westerman is subject to the following terms and conditions.

14. **Westerman's broker-associate license is on probation.** Westerman's real estate broker-associate license is hereby placed on PROBATION for a period to run concurrently with the probation placed on Licensee's licenses in AHC Case No. 15-0337 RE. During the period of probation on his real estate broker-associate license,

Westerman shall be entitled to practice as a real estate broker-associate provided he adheres to all the terms stated herein. The period of probation shall constitute the "disciplinary period."

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

A. Westerman shall keep the MREC apprised at all times in writing of his current address and telephone number at each place of residence and business. Westerman shall notify the MREC in writing within ten days of any change in this information.

B. If at any time during the disciplinary period Westerman wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Westerman must obtain the Broker Acknowledgement form from the MREC.

C. Westerman shall timely renew his Missouri real estate broker-associate license(s), timely pay all fees required for license renewal, and comply with all other requirements necessary to maintain his license(s) in a current and active state. During the disciplinary period, Westerman shall not place his license(s) on inactive status as would otherwise be allowed pursuant to 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Probated License Order, Westerman may surrender his real estate license(s) by submitting a letter to the MREC. If Westerman applies for a real estate license after surrender,

Westerman shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Probated License Order.

D. Westerman 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.

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

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

G. Westerman 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.

16. Upon the expiration and successful completion of the disciplinary period, Westerman's real estate broker-associate license shall be fully restored if all other requirements of the law have been satisfied; provided, however, that in the event the MREC determines that Westerman has violated any term or condition of this Order, the MREC may, in its discretion, after an evidentiary hearing, vacate and set

aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Westerman's real estate broker-associate license.

17. No order shall be entered by the MREC pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the MREC in accordance with the provisions of Chapter 536, RSMo.

18. If the MREC determines that Westerman has violated a term or condition of this Order, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the MREC may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Order in its determination of appropriate legal actions concerning such violation.

19. If any alleged violation of this Order occurs during the disciplinary period, the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. The MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Order has occurred.

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

SO ORDERED AND EFFECTIVE THIS 29th DAY OF March 2016.

Joseph Denkler, Executive Director
Missouri Real Estate Commission



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