

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE COMMISSION
AND
SEAN M. WHITEAKER

Sean M. Whiteaker (Whiteaker) and the Missouri Real Estate Commission (MREC) enter into this Settlement Agreement for the purpose of resolving the question of whether Whiteaker's license as a real estate broker salesperson, no. 1999099784, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo Supp. 2012. The MREC and Whiteaker jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2012.

Whiteaker acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

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

administrative hearing commissioner concerning the charges pending against him; 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 Whiteaker may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

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

Whiteaker acknowledges that he has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Whiteaker stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Whiteaker's license as a real estate broker salesperson, license no. 1999099784, is subject to disciplinary action by the MREC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Whiteaker in Part II herein is based only on the agreement set out in Part I herein.

Whiteaker understands that the MREC may take further disciplinary action against him based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREC and Whiteaker herein jointly stipulate to the following:

1. Whiteaker holds a Missouri real estate broker salesperson license, no. 1999099784. Whiteaker's license is, and was at all relevant times herein, current and active.
2. On or about May 20, 2013, in the Jefferson County 23rd Judicial Circuit Court, State of Missouri, Whiteaker pled guilty to Resisting Arrest/Detention/Stop by Fleeing – Creating a Substantial Risk of Serious Injury/Death to Any Person, a class D felony, as defined by § 575.150 RSMo Supp. 2012, which states:

A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is making an arrest, or attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:

- (1) Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer[.]

3. On or about May 20, 2013, in the Jefferson County 23rd Judicial Circuit Court, State of Missouri, Whiteaker pled guilty to Driving While Intoxicated, a class B misdemeanor, as defined by § 577.010 RSMo, which states:

A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

4. On or about May 20, 2013, in the Jefferson County 23rd Judicial Circuit Court, State of Missouri, Whiteaker pled guilty to Failure to Display Lighted Lamps on a Motorcycle as required, a misdemeanor, as defined by § 307.040 RSMo, which states:

No person shall drive, move, park or be in custody of any vehicle or combination of vehicles on any street or highway during the times when lighted lamps are required unless such vehicle or combination of vehicles displays lighted lamps and illuminating devices as hereinafter in this chapter required. No person shall use on any vehicle any approved electric lamp or similar device unless the light source of such lamp or device complies with the conditions of approval as to focus and rated candlepower.

5. On or about October 7, 2011, in the Jefferson County 23rd Judicial Circuit Court, State of Missouri, Whiteaker pled guilty to Possession of a Controlled Substance Except 35 Grams or Less of Marijuana, a class C felony, as defined by § 195.202, RSMo, which states:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

2. Any person who violates this section with respect to any controlled substance except thirty-five grams or less of marijuana is guilty of a class C felony.

6. On or about October 7, 2011, in the Jefferson County 23rd Judicial Circuit Court, State of Missouri, Whiteaker pled guilty to Domestic Assault in the Third Degree, a class A misdemeanor, as defined by § 565.074, RSMo, which states:

A person commits the crime of domestic assault in the third degree if the act involves a family or household member or an adult who is or has been in a continuing social relationship of a romantic or intimate nature with the actor, as defined in section 455.010 and:

(1) The person attempts to cause or recklessly causes physical injury to such family or household member[.]

7. On or about October 7, 2011, in the Jefferson County 23rd Judicial Circuit, State of Missouri, Whiteaker pled guilty to Unlawful Use of Drug Paraphernalia, a class A misdemeanor, as defined by § 195.233, RSMo, which states:

It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or an imitation controlled substance in violation of sections 195.005 to 195.425.

8. Section 339.040.1, RSMo Supp. 2012, states:

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

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

(1) Are persons of good moral character; and

...

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

9. Whiteaker's conduct, as stated herein, demonstrates a lack of good moral character and a lack of competence to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.

10. Whiteaker's conduct, as stated herein, provides cause to discipline his license pursuant to § 339.100.2(16) and (18), RSMo Supp. 2012, which state:

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

.....

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

.....

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter,

for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed[.]

II.
Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2012.

11. **Whiteaker's license is on probation.** Whiteaker's license as a real estate broker salesperson is hereby placed on PROBATION starting on the effective date of this Settlement Agreement through July 15, 2018. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Whiteaker shall be entitled to practice as a real estate broker salesperson under §§ 339.010 through 339.205 and 339.710 through 339.855, RSMo, as amended, provided Whiteaker adheres to all the terms of this agreement.

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

A. **Quarterly reports.** Whiteaker shall obey and comply with all terms and conditions of probation for his criminal supervision. Whiteaker shall prepare and submit quarterly written reports to the MREC regarding the status of and compliance with his criminal probation, parole, and/or release, as well as his compliance with the terms and conditions of this Settlement Agreement.

Whiteaker is responsible for ensuring that such quarterly reports are received by the MREC on or before January 10, April 10, July 10, and October 10 during each year of the disciplinary period. Whiteaker shall submit the first such report so that the MREC receives it on or before January 10, 2014.

B. Whiteaker shall keep the MREC apprised at all times of his current address and telephone number at each place of residence and business. Whiteaker shall notify the MREC in writing within ten (10) days of any change in this information.

C. Whiteaker shall timely renew his real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain his license(s) in a current and active status. During the disciplinary period, Whiteaker shall not place his real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Whiteaker may surrender his real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Whiteaker applies for a real estate license after surrender, Whiteaker shall be required to re-qualify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

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

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

F. During the probationary period, Whiteaker shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.

G. Whiteaker shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated thereunder, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Whiteaker's license as a real estate broker under § 339.100.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

13. Upon the expiration of the disciplinary period, the license of Whiteaker shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Whiteaker has violated any term or condition

of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Whiteaker's license.

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

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

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

17. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Whiteaker agrees and stipulates that the MREC has continuing

jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

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

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

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

21. Whiteaker, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out

of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

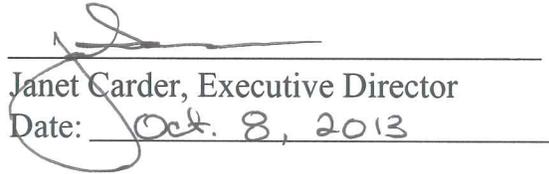
22. Whiteaker understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Whiteaker's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

23. If Whiteaker requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Whiteaker's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Whiteaker as allowed by law. If Whiteaker does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

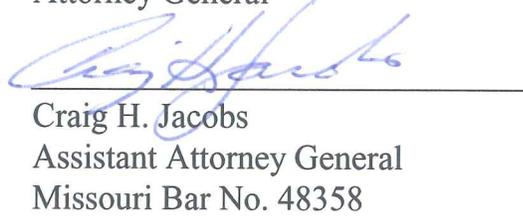
LICENSEE

 9/30/13
Sean M. Whiteaker Date

MISSOURI REAL ESTATE
COMMISSION


Janet Carder, Executive Director
Date: Oct. 8, 2013

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