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Regulated Industries Complaints Office  
Department of Commerce and  
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DEPT OF COMMERCE  
& CONSUMER AFFAIRS  
STATE OF HAWAII

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2006 APR 26 P 2: 04

HEARINGS OFFICE

Attorney for Department of Commerce  
and Consumer Affairs

REAL ESTATE COMMISSION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the ) REC 2002-295-L  
Real Estate Broker's Licenses of )  
)  
) SETTLEMENT AGREEMENT PRIOR TO  
KUMULANI VACATIONS AND REALTY, ) FILING OF PETITION FOR  
INC., doing business as KUMULANI ) DISCIPLINARY ACTION AND  
RENTALS, and DAVID WILLIAM CUDLIPP, ) COMMISSION'S FINAL ORDER  
)  
)  
Respondents. )  
\_\_\_\_\_ )

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION  
FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER

Respondents Kumulani Vacations and Realty, Inc., doing business as Kumulani Rentals ("Kumulani") and David William Cudlipp ("Cudlipp") (collectively, "Respondents"), and the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("RICO"), through its undersigned attorney, enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. Respondent Kumulani is licensed by the Real Estate Commission (the "Commission") as a real estate broker under License Number RB 13531. Said license was issued on February 16, 1984, and currently has an expiration date of December 31, 2006.

2. Respondent Cudlipp is licensed by the Commission as a real estate broker under

License Number RB 16654. Said license was issued on March 20, 1995, and currently has an expiration date of December 31, 2006.

3. Respondent Cudlipp has been the principal broker for Respondent Kumulani since February 21, 1997.

4. The last known business address for Respondents is 1993 S. Kihei Road, #211, Kihei, Hawaii 96753. The last known mailing address for Respondents is P.O. Box 1190, Kihei, Hawaii 96753.

5. Prior to May 12, 2003 (date of RICO's letter to Respondents), RICO received a complaint against Respondents from Diane and Gordon Hansen ("Hansens"), alleging that Respondents charged them for unnecessary or not pre-approved repairs, discounted rental rates without approval, and charged an "owner guest fee" and "unit condition report" fee that was not specifically included in the property management agreements for their units B206 and D202 at the Luana Kai, Kihei, Hawaii. The allegations pertained to incidents that had occurred about one (1) year earlier (May and June of 2002).

6. On May 12, 2003, RICO requested that Respondents answer 18 questions regarding the allegations by the Hansens.

7. Within four (4) days, by letter dated May 16, 2003, Respondents answered all 18 questions, including the attachment of supporting documentation, such as maintenance reports; letters; reservation records; cleaning charges; invoices; and monthly statements. Respondents answered all of the questions and challenged all of the allegations made by the Hansens. Although Respondents feel they acted properly at all times, they nevertheless offered to reduce the billings, in an effort to settle the matter amicably with the Hansens. However, the Hansens were still not willing to accept the terms.

8. RICO alleges that, on or about May 6, 2002, Respondents retained the services of an

unlicensed plumber to make repairs to the toilet in unit D202 at the Luana Kai.

9. In Respondents' answer to the 18 questions, Respondents fully and openly disclosed that the plumber who repaired the toilet over one (1) year before for a total cost of \$186.60 was Kenny Moss of Humpback Drain Service. The repairs were needed immediately because the water rushed out of the toilet during flushing and the floor was wet. It was an emergency.

10. Respondents were not aware that Mr. Moss was not licensed in the State of Hawaii. There was a license number on Mr. Moss' repair van, and Mr. Moss was hired by many, many others on Maui, including some of Respondents' competitors in the rental business. Mr. Moss was highly recommended by others because he did excellent work; was always available seven (7) days a week; and his rates were very reasonable. Since Mr. Moss was listed in the Yellow Pages of the local Telephone Directory; was highly recommended by many others; and had a license number on his van, Respondents did not think of asking to see his license.

11. The allegations in the complaint by the Hansens were for incidents occurring in May and June, 2002, about one (1) year earlier, and Respondents answered all 18 questions within four (4) days; and Respondents did not hear from RICO again for nearly three (3) years when RICO sent a letter dated March 9, 2006, offering to settle the Hansen's complaint in accordance with this Settlement Agreement.

12. The foregoing allegations, if proven, would constitute violations of the following statutes governing the conduct of real estate brokers licensed in the State of Hawaii: Hawaii Revised Statutes ("HRS") §§ 436B-19(6) (aiding and abetting an unlicensed person), 436B-19(16) (employing or utilizing an unlicensed person), 467-14(8) (conduct constituting fraudulent or dishonest dealings), and 467-14(13) (violation of HRS chapter 467 and rules thereunder), and Hawaii Administrative Rules ("HAR") § 16-99-3(f) (agreements shall set forth essential terms and conditions).

13. The Commission has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENTS:

1. Respondent is represented by an attorney in this matter, Paul M. Ueoka, Esq., whose mailing address is P.O. Box 1086, Wailuku, Hawaii 96793-1086.

2. The allegations in the Hansens' complaint occurred almost four (4) years ago, and several witnesses, including the plumber, Kenny Moss, are no longer on Maui.

3. Respondents have been informed of their right to have a hearing to determine the issues in RICO's investigation. Pursuant to HRS § 91-9(d), Respondents waive their right to a hearing and agree to a disposition of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents being at all times relevant herein licensed as real estate brokers by the Commission acknowledge that they are subject to penalties including but not limited to, revocation, suspension or limitation of their license and civil fines, if the foregoing violations are proven at hearing.

5. Respondents strongly deny that they violated any law or rule, but acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against their real estate broker's licenses.

6. Respondents agree to enter into this Settlement Agreement as a compromise of the claims by the Hansens and to save on the costs and expenses, including attorneys' fees, of proceeding with an administrative hearing on this matter.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. REC 2002-295-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents, jointly and severally, agree to pay a fine in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 U.S. DOLLARS (\$1,500.00), the payment of which shall be due within thirty (30) days of the Commission's approval of this Settlement Agreement. Said payment shall be made by **cashier's check or money order made payable to "State of Hawaii - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Wendy J. Utsumi, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30th day to be in compliance with this Settlement Agreement.

2. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely pay the administrative fine as set forth in paragraph C.1 above, Respondents' licenses shall be automatically revoked for a period of five (5) years upon RICO's filing of an affidavit with the Commission attesting to such failure. In case of such revocation, Respondents shall turn in all indicia of their licensure to the Executive Officer of the Commission within ten (10) days after receipt of notice of the revocation. Upon completion of the revocation period, Respondents understand that they will need to apply to the Commission for a new license pursuant and subject to the requirements and conditions set forth in HRS §§ 92-17, 436B-21, 467-15.5, and HAR 16-99-10.

3. Possible further sanction. The Commission, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Commission may deem appropriate if Respondents violate any other provision of the statutes or rules governing the conduct of real estate brokers in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

4. Approval of the Commission. Respondents agree that, except for the

representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7, and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Commission.

5. No Objection if Commission Fails to Approve. If the Commission does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondents in the Commission's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree that neither they nor any attorney that they may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Commission's proceeding against them on the basis that the Commission has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

7. No Reliance on Representations by RICO. Other than the matter specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any promise to Respondents to induce entry into this Settlement Agreement, and Respondents are not relying upon any promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Wailuku, Maui, Hawaii, April 13, 2006.

/s/ DAVID WILLIAM CUDLIPP

DAVID WILLIAM CUDLIPP  
Respondent

DATED: Wailuku, Maui, Hawaii, April 13, 2006.

KUMULANI VACATIONS AND REALTY,  
INC., doing business as KUMULANI  
RENTALS

By: /s/ DAVID WILLIAM CUDLIPP

David William Cudlipp  
Its President and Principal Broker

DATED: Honolulu, Hawaii, [ April 26, 2006 ], 2006.

/s/ WENDY J. UTSUMI

WENDY J. UTSUMI  
Attorney for Department of Commerce and  
Consumer Affairs

APPROVED AS TO FORM & CONTENT:

/s/ PAUL M. UEOKA

PAUL M. UEOKA  
Attorney for Respondent

IN THE MATTER OF THE REAL ESTATE BROKER'S LICENSES OF KUMULANI VACATIONS AND REALTY, INC., DOING BUSINESS AS KUMULANI RENTALS, AND DAVID WILLIAM CUDLIPP; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; CASE NO. REC 2002-295-L

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APPROVED AND SO ORDERED:  
REAL ESTATE COMMISSION  
STATE OF HAWAII

[ May 26, 2006 ]

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TRUDY I. NISHIHARA  
Chairperson

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DATE

**/s/ IRIS R. OKAWA**

**/s/ LOUIS E. ABRAMS**

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IRIS R. OKAWA  
Vice-Chairperson

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LOUIS E. ABRAMS

**/s/ CAROL MAE A. BALL**

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CAROL MAE A. BALL

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KATHLEEN H. KAGAWA,  
Ph.D.

**/s/ STANLEY M. KURIYAMA**

**/s/ MICHELE SUNAHARA LOUDERMILK**

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STANLEY M. KURIYAMA

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MICHELE SUNAHARA  
LOUDERMILK

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VERN M. YAMANAKA

PVL 07/22/05



STATE OF HAWAII )  
 ) ss.  
COUNTY OF MAUI )

On this 13 day of April, 2006, before me personally appeared **DAVID WILLIAM CUDLIPP**, to me personally known, who, being by me duly sworn or affirmed, did say that he is the President and Principal Broker of KUMULANI VACATIONS AND REALTY, INC., doing business as KUMULANI RENTALS, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

[Signature redacted]

Name: PAUL M. UEOKA

Notary Public, State of Hawaii

My commission expires: MAR 23 2007

L.S.

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