

*Handwritten signature*

Department of Real Estate  
320 W. 4<sup>th</sup> St., Room 350  
Los Angeles, California 90013

**FILED**

AUG -2 2012

Telephone: (213) 576-6982

DEPARTMENT OF REAL ESTATE  
BY: *Handwritten signature*

2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

BEFORE THE DEPARTMENT OF REAL ESTATE

STATE OF CALIFORNIA

\* \* \*

In the Matter of the Accusation of )	No. H-37719 LA
)	L-2012 010 449
)	
COLONIAL REALTY GROUP, INC.; )	
and KENNETH MOORE MC FARLAND )	<u>STIPULATION AND AGREEMENT</u>
individually and as )	
designated officer of )	
Colonial Realty Group, Inc., )	
)	
)	
)	
Respondents. )	
)	

It is hereby stipulated by and between COLONIAL REALTY GROUP, INC., and KENNETH MOORE MC FARLAND (sometimes referred to as Respondents), and their attorney, Kelly S. Johnson, and the Complainant, acting by and through James R. Peel, Counsel for the Department of Real Estate, as follows for the purpose of settling and disposing of the Accusation filed on December 7, 2011, in this matter.

1           1. All issues which were contested and all evidence  
2 which was presented by Complainant and Respondents at a formal  
3 hearing on the Accusation, which hearing is to be held in  
4 accordance with the provisions of the Administrative Procedure  
5 Act ("APA"), shall instead and in place thereof be submitted  
6 solely on the basis of the provisions of this Stipulation and  
7 Agreement ("Stipulation").

8           2. Respondents have received, read and understand the  
9 Statement to Respondent, the Discovery Provisions of the  
10 Administrative Procedure Act ("APA") and the Accusation filed by  
11 the Department of Real Estate in this proceeding.

12           3. On December 20, 2011, Respondents filed a Notice  
13 of Defense pursuant to Section 11506 of the Government Code for  
14 the purpose of requesting a hearing on the allegations in the  
15 Accusation. Respondents hereby freely and voluntarily withdraw  
16 said Notice of Defense. Respondents acknowledge that they  
17 understand that by withdrawing said Notice of Defense they will  
18 thereby waive their rights to require the Commissioner to prove  
19 the allegations in the Accusation at a contested hearing held in  
20 accordance with the provisions of the APA and that they will  
21 waive other rights afforded to them in connection with the  
22 hearing such as the right to present evidence in defense of the  
23 allegations in the Accusation and the right to cross-examine  
24 witnesses.  
25  
26  
27

1  
2 4. This Stipulation is based on the factual  
3 allegations contained in the Accusation filed in this  
4 proceeding. In the interest of expedience and economy,  
5 Respondents choose not to contest these factual allegations, but  
6 to remain silent and understand that, as a result thereof, these  
7 factual statements, will serve as a prima facie basis for the  
8 disciplinary action stipulated to herein. The Real Estate  
9 Commissioner shall not be required to provide further evidence  
10 to prove such allegations.

11 5. This Stipulation is made for the purpose of  
12 reaching an agreed disposition of this proceeding and is  
13 expressly limited to this proceeding and any other proceeding or  
14 case in which the Department of Real Estate ("Department"), the  
15 state or federal government, or an agency of this state, another  
16 state or the federal government is involved.

17  
18 6. It is understood by the parties that the Real  
19 Estate Commissioner may adopt the Stipulation as her decision  
20 in this matter thereby imposing the penalty and sanctions on  
21 Respondents' real estate licenses and license rights as set  
22 forth in the below "Order". In the event that the Commissioner  
23 in her discretion does not adopt the Stipulation, the  
24 Stipulation shall be void and of no effect, and Respondents  
25 shall retain the right to a hearing and proceeding on the  
26 Accusation under all the provisions of the APA and shall not be  
27 bound by any stipulation or waiver made herein.



1  
2 1. Provided, however, that ninety (90) days of said  
3 suspension shall be stayed for two (2) years, upon the following  
4 terms and conditions:

5 a. Respondents shall obey all laws, rules and  
6 regulations governing the rights, duties and responsibilities of  
7 a real estate licensee in the State of California; and

8 b. That no final subsequent determination be made,  
9 after hearing or upon stipulation that cause for disciplinary  
10 action occurred within two (2) years of the effective date of  
11 this Decision. Should such a determination be made, the  
12 Commissioner may, in her discretion, vacate and set aside the  
13 stay order and reimpose all or a portion of the stayed  
14 suspension. Should no such determination be made, the stay  
15 imposed herein shall become permanent.

16  
17 2. Pursuant to Section 10148 of the Business and  
18 Professions Code, Respondents COLONIAL REALTY GROUP, INC. and  
19 KENNETH MOORE MC FARLAND shall pay the cost of the audit which  
20 led to this matter and the Commissioner's reasonable cost for a  
21 follow-up audit to determine if Respondents have corrected the  
22 violations which led to this disciplinary action. In  
23 calculating the amount of the Commissioner's reasonable cost,  
24 the Commissioner may use the estimated average hourly salary for  
25 all persons performing audits of real estate brokers, and shall  
26 include an allocation for travel costs, including mileage, time  
27 to and from the auditor's place of work and per diem.

1 Respondents shall pay such cost within 45 days of receiving an  
2 invoice from the Commissioner detailing the activities performed  
3 during the audit and the amount of time spent performing those  
4 activities. The Commissioner may, in her discretion, vacate and  
5 set aside the stay order, if payment is not timely made as  
6 provided for herein, or as provided for in a subsequent  
7 agreement between the Respondents and the Commissioner. The  
8 vacation and the set aside of the stay shall remain in effect  
9 until payment is made in full, or until Respondents enter into  
10 an agreement satisfactory to the Commissioner to provide for  
11 payment. Should no order vacating the stay be issued the stay  
12 imposed herein shall become permanent.

13 3. All licenses and licensing rights of Respondents

14 COLONIAL REALTY GROUP, INC. and KENNETH MOORE MC FARLAND are  
15 indefinitely suspended unless and until they pay \$2,000 to Gene  
16 Ho, and submit satisfactory proof to the Department of Real  
17 Estate. All such proof shall be submitted to Real Estate  
18 Counsel James Peel, Department of Real Estate, 320 W. Fourth  
19 St., Room 350, Los Angeles, California 90013.

20  
21 DATED: 6-22-12

James R. Peel  
22 JAMES R. PEEL, Counsel for the  
23 Department of Real Estate

24 \* \* \*

25 We have read the Stipulation and Agreement, and its  
26 terms are understood by us and are agreeable and acceptable to  
27 us. We understand that we are waiving rights given to us by the  
California Administrative Procedure Act (including but not

1 limited to Sections 11506, 11508, 11509 and 11513 of the  
2 Government Code), and we willingly, intelligently and  
3 voluntarily waive those rights, including the right of requiring  
4 the Commissioner to prove the allegations in the Accusation at a  
5 hearing at which we would have the right to cross-examine  
6 witnesses against us and to present evidence in defense and  
7 mitigation of the charges.

8 Respondents can signify acceptance and approval of the  
9 terms and conditions of this Stipulation and Agreement by faxing  
10 a copy of the signature page, as actually signed by Respondents,  
11 to the Department at the following telephone/fax number:

12 (213) 576-6917. Respondents agree, acknowledge and understand  
13 that by electronically sending to the Department a fax copy of  
14 his or her actual signature as it appears on the Stipulation and  
15 Agreement, that receipt of the faxed copy by the Department  
16 shall be as binding on Respondents as if the Department had  
17 received the original signed Stipulation and Agreement.

18 Further, if the Respondents are represented, the  
19 Respondents' counsel can signify his or her agreement to the  
20 terms and conditions of the Stipulation and Agreement by  
21 submitting that signature via fax.

22 DATED: \_\_\_\_\_  
23 COLONIAL REALTY GROUP, INC.,  
24 Respondent

25 DATED: \_\_\_\_\_  
26 KENNETH MOORE MC FARLAND  
27 Respondent

DATED: \_\_\_\_\_  
Kelly S. Johnson  
Counsel For Respondents

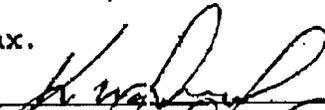
00000000

1 limited to Sections 11506, 11508, 11509 and 11513 of the  
 2 Government Code), and we willingly, intelligently and  
 3 voluntarily waive those rights, including the right of requiring  
 4 the Commissioner to prove the allegations in the Accusation at a  
 5 hearing at which we would have the right to cross-examine  
 6 witnesses against us and to present evidence in defense and  
 7 mitigation of the charges.

8 Respondents can signify acceptance and approval of the  
 9 terms and conditions of this Stipulation and Agreement by faxing  
 10 a copy of the signature page, as actually signed by Respondents,  
 11 to the Department at the following telephone/fax number:  
 12 (213) 576-6917. Respondents agree, acknowledge and understand  
 13 that by electronically sending to the Department a fax copy of  
 14 his or her actual signature as it appears on the Stipulation and  
 15 Agreement, that receipt of the faxed copy by the Department  
 16 shall be as binding on Respondents as if the Department had  
 17 received the original signed Stipulation and Agreement.

18 Further, if the Respondents are represented, the  
 19 Respondents' counsel can signify his or her agreement to the  
 20 terms and conditions of the Stipulation and Agreement by  
 21 submitting that signature via fax.

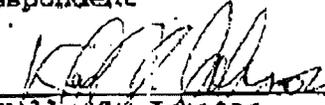
22 DATED: 6-21-12

  
 COLONIAL REALTY GROUP, INC.,  
 Respondent

24 DATED: 6-21-12

  
 KENNETH MOORE MC FARLAND  
 Respondent

26 DATED: 6/21/12

  
 Kelly S. Johnson  
 Counsel For Respondents

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

\* \* \*

The foregoing Stipulation and Agreement is hereby  
adopted as my Decision and Order in this matter, and shall  
become effective at 12 o'clock noon on AUG 22 2012

IT IS SO ORDERED 7/11/2012

Real Estate Commissioner



By WAYNE S. BELL  
Chief Counsel