BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

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| IN THE MATTER OF:<br><br>JOHN S. COLMAN<br>Certified Residential Appraiser<br>Certificate No. 21248 | CASE NOS. 2975, 2976, 2977, 2978, 2979, 2980 and 2981, 2982<br><br>CONSENT AGREEMENT AND ORDER FOR THIRTY DAY SUSPENSION |

In the interest of a prompt and judicious settlement of the above-captioned matters before the Arizona Board of Appraisal ("Board") and consistent with public interest, statutory requirements and responsibilities of the Board, and pursuant to A.R.S.§ 32-3601 *et seq.* and A.R.S. §41-1092.07(F)(5), John S. Colman ("Respondent"), holder of Certificate No. 21248 and the Board enter into this Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of this matter.

On April 22, 2011, the Board met to discuss Case Nos. 2975, 2976, 2977, 2978, 2979, 2980 and 2981. Respondent appeared personally and on his own behalf. At the conclusion of the Board's consideration of this matter, the Board voted to offer the Respondent a Consent Agreement and Order of Discipline in lieu of further administrative proceedings.

## JURISDICTION

1. The Arizona State Board of Appraisal ("Board") is the state agency authorized pursuant to A.R.S. § 32-3601 *et seq.*, and the rules promulgated thereunder, found in the Arizona Administrative Code ("A.A.C." or "rules") at R4-46-101 *et seq.*, to regulate and control the licensing and certification of real property appraisers in the State of Arizona.

2. Respondent holds a certificate as a Certified Residential Appraiser in the State of Arizona, Certificate No. 21248 issued on July 12, 2005, pursuant to A.R.S. § 32-3612.

## CONSENT AGREEMENT

Respondent understands and agrees that:

1. The Board has jurisdiction over Respondent and the subject matter pursuant to A.R.S. § 32-3601 *et seq.*

2. Respondent has the right to consult with an attorney prior to entering into this Consent Agreement.

3. Respondent has a right to a public hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. Respondent irrevocably waives his right to such a hearing.

4. Respondent irrevocably waives any right to rehearing or review or to any judicial review or any other appeal of this matter.

5. This Consent Agreement shall be subject to the approval of the Board and shall be effective only when signed by the Executive Director and accepted by the Board. In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the Board reject this Consent Agreement and this case proceeds to hearing, Respondent will assert no claim that the Board was prejudiced by its review and discussion of this document or any records relating thereto.

6. The Consent Agreement, once approved by the Board and signed by the Respondent, shall constitute a public record which may be disseminated as a formal action of the Board.

## FINDINGS OF FACT

## 2975

On or about December 13, 2010, the Board's investigation revealed the following:

1. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 8626 East San Alfredo Drive, Scottsdale, AZ 85258 with an effective date of value of March 28, 2006

2. The subject property was one of six properties in the McCormick Ranch area appraised by Respondent. In this report, the zoning is stated incorrectly, as is the legal description and the subject is not on a private street as indicated in the report.

3. In addition, there are solar panels on the subject in the rear but the panels were not discussed or disclosed in the report.

4. Respondent disclosed the sale of the subject in April of 2005 but did not analyze the sale. At the time, the subject sold for $483,900 but then was sold a year later for $529,900 with no down payment. Respondent did not analyze the difference in selling price from 2005 to 2006. The house was then flipped and sold for $699,900 on an asking price of $579,900 after 203 days on the market. This transaction was also not analyzed by Respondent.

5. Respondent states that the "Income Approach not applicable." However, the subject is a rental (as is Comparable Sale no.1) and the client had requested and the report included a Rent Schedule and Operating Income Statement. Therefore, the Income Approach is applicable and necessary.

6. There was no in-file data in support of the Cost Approach or the depreciation amount.

7. With respect to comparable sale no. 1, this property had an original list/asking price of $640,000 and sold for $595,000 in March of 2006 then flipped for $715,000. The parties to this transaction were also involved in the subject's transactions

in paragraph 4 above. The Respondent listed these transactions but made no analysis or disclosure concerning the parties' involvement with the subject. The Respondent also noted there was a $156,000 down payment which is incorrect. Additionally, Respondent did not disclose the large plasma television or the surround sound. Also, Respondent states that the "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum." The site value by abstraction is not credible and non–supportable given the information obtained by the Board's investigation. The results of this sale are not credible.

8. With respect to sale no. 2, the Respondent incorrectly noted the sales price and the $1.78 per square foot site size difference adjustment was not explained or supported. Additionally, the +$10,000 adjustment for the "Std.Kitchen" (Standard Kitchen) was not supported with notations in the workfile. Also, the down payment was incorrectly noted at $1,250. Also, Respondent states that the "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum." The site value by abstraction is not credible and non–supportable given the information obtained by the Board's investigation. Overall, the results for this sale are not credible.

9. Comparable Sale No. 3 is in a superior location and was recently extensively remodeled. The site size adjustment for this sale's larger lot at $1.79 per square foot is not credible. Also, Respondent states that the "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum." The site value by abstraction is not credible and non–supportable given the information obtained by the Board's investigation. After adjustments to this sale, the results are not credible.

10. With respect to comparable sale no. 4, the site size was adjusted at $1.74 per square foot for size difference without support or explanation. Moreover, the MLS noted that this sale had a "Gourmet kitchen with breakfast room" Respondent noted a "Std.Kitchen +$10,000." Also, Respondent states that the "Land value was based on

abstraction. Summary of comparable land sales/listings, see addendum." The site value by abstraction is not credible and non–supportable given the information obtained by the Board's investigation.

**2976**

On or about December 13, 2010, the Board's investigation revealed the following:

11. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 26247 North Paso Trail, Scottsdale, AZ 85255 with an effective date of value of March 28, 2006 but the date of the Report is February 16, 2006. It should be noted that these are the dates as they appear in Respondent's report; an obvious typographical error.

12. The subject had been on the market for 58 days with an asking price of $1,150,000 and sold for $1,375,000 or $225,000 above the asking price. Respondent did not disclose or analyze this fact in the report and made no notes of this fact in the workfile. In addition, the "contract" Respondent had in his workfile was not a complete contract but rather a portion of a counteroffer. In addition, the zoning is incorrectly noted.

13. The MLS for the subject noted "Needs a little TLC" and "Fix-Up (Needs Repair)." However, Respondent notes "Overall condition of improvements is average, with typical physical depreciation noted."

14. The majority of the subject's 2.45 acres is in a flood zone. While the report did note the property was located in a flood hazard area and flood zone, the site section did not disclose the parts of the subject parcel that were located in the flood zone. In addition, there was no analysis of the flood conditions as it pertains to the subject's value.

15. In addition, all sales photos are from the MLS which is significant for the factual matters about the sales cited.

16. The workfile also did not contain supporting cost data. The Respondent did not disclose or discuss the MLS statement that the subject was in need of TLC and needed repairs.

17. With respect to sale no. 1, Respondent incorrectly noted that the home was not in a gated subdivision. Respondent noted that this property's 831 square foot guest house had "NMD" (No measurable difference) in comparison to the subject's "stg/wine clr." which measures 10' by 14'. There is also a discrepancy with respect to this sale's square footage and the workfile contains no verification or support for the data and the report has no evidence or explanation of the discrepancy. Moreover, this sale was adjusted $100 per square foot for gross living area size but this is not credible given the $165 per square foot cited for the cost new for the subject. This adjustment was also not explained in the report or supported in the workfile. The report's information relating to the number of garage stalls is inaccurate and the adjustment is not credible. Additionally, this sale had additional fireplaces that the subject did not have but there was no adjustment made. This sale and the subject were rated "Average" by Respondent despite the MLS's statement that the subject was in need of repairs and TLC. The results of this sale are not credible.

18. With respect to comparable sale no. 2, there is again a discrepancy with respect to the property's gross living area and the workfile contains no verification or support for the data and the report has no evidence or explanation of the discrepancy. Moreover, this sale was adjusted $100 per square foot for gross living area size but this is not credible given the $165 per square foot cited for the cost new for the subject. This adjustment was also not explained in the report or supported in the workfile. Additionally, this sale's 21, 433 square foot golf-course site was stated by the Respondent to be offset for the subject's 2.45 acres, most of which was in the flood plain. This is not credible. This property is in a guarded gated community, not a gate

community as noted in the report. There is no discussion or adjustment for this fact and the fact that the HOA fees are double that of the subject's. Respondent's adjustments for the remodel, deluxe kitchen and wine cellar are not explained, supported or credible. There is also a lack of adjustments for this sale's number of fireplaces. Overall, the results for this sale are not credible.

19. Comparable sale no. 3 is in the same development as comparable sale no. 2 and has a guarded gatehouse but that was not disclosed in the report and was built by a luxury home builder. Respondent's site size adjustment of $1 per square foot was without explanation and support. The wine cellar adjustment of $25,000 is not supported and there were no adjustments for fireplaces, rock waterfall and landscaping. Overall, the adjusted results for this sale are not credible.

20. With respect to comparable no. 4, the adjustment of $100 per square foot for the difference in gross living area and +$25,000 for the subject's wine cellar is not credible.

21. Comparable Sale no. 5 has a guest house which Respondent equated with the subject's 10' by 14' wine cellar. Respondent's field notes for this property are minimal. Additionally, the site value was stated at $650,000 with the statement "Land value was based on abstraction." However, there was no abstraction data in the workfile and the addendum did not contain a summary of comparables land sales/listings as stated by Respondent.

**2977**

On or about December 13, 2010, the Board's investigation revealed the following:

22. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 8501 East Quarterhorse Trail, Scottsdale, AZ 85258 with a date of value of April 22, 2006

23. Respondent discloses the incorrect owner of the subject property at the time of the appraisal report. The zoning is also noted in the report incorrectly and the street is erroneously marked "private."

24. On Page 1 of 6, under the Improvement Section, the subject's improvements are rated as "Average" but on Page 2 of 6 under quality and condition, the rating is changed to "Good."

25. The date of the report and the date of vale is April 22, 2006 but the date of transmission of the contract was April 26, 2006, two days after the date of the report/date of value. Also, there were numerous documents in the workfile that were dated April 23, 2006.

26. With respect to comparable sale no.1, this property was a flip transaction and many of the parties to this transaction were also involved in the subject property transaction. The Respondent noted the transactions in the report but made no analysis or disclosure. The appraisal report also noted incorrectly that there was a $156,000 down payment. The 50" plasma TV with surround sound was not disclosed or adjusted. The results of this sale are not credible.

27. Comparable sale no .2 was a luxury home that sold after 21 days on the market for $625,000 and not the report's stated sales price of $699,000. The Respondent also stated that there was a down payment of $1,250 and that is in error. Overall, the results of this sale are not credible.

28. Comparable sale no. 3 previously sold on 6/2/05 (not the reported date of 8/2/05) for $650,000 which was substantially above the market price level of the subject and other sales and is indicative of the property's quality. The MLS supported the extent of the remodel and the numerous upgrades but yet Respondent stated the condition as "Good/Updated" and "Std.Kitchen." Overall, the results of the sale are not credible.

29. With respect to comparable no. 4, Respondent failed to note the numerous amenities within this property's subdivision and did not fully disclose the recent upgrades. The adjustment for the gross living area at $50 per square foot is not consistent with adjustments of the other case matters. Respondent states that "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum" All of the reports captioned above have these same statement without sales in the addenda or any abstraction data. The site value by abstraction is not credible and non-supportable and according to information obtained during the Board's investigation, the site size adjustments are not credible. In addition, there was no in-file data in support of the Cost Approach or the depreciation amount. Finally, the report states "Income Approach not applicable." The subject is a rental as is Sale No. 1. The client had requested and the report included a Rent Schedule and Operating Income Statement. Therefore, the Income Approach is applicable and necessary.

**2978**

On or about December 13, 2010, the Board's investigation revealed the following:

30. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 8621 East Ardo Drive, Scottsdale, AZ 85259 with an effective date of value of May 4, 2006 with a date of report of May 9, 2006.

31. The zoning is noted incorrectly and the street is marked private which is in error.

32. The subject property sold in August and October of 2004. These sales were not analyzed by Respondent and the workfile did not contain the MLS information for the sales. It was a flip sale at $595,000, recorded June 5, 2006 and then again on the same day for $700,000. The parties to the flip transaction were some of the same parties involved in the other transactions. Respondent did not disclose or discuss this fact. The

contract stated sales price was $735,000, while the report stated, "Executed contract dated 4/28/2006 with sales price agreed upon @ $725,000." The value of conclusion was $725,000.

33. With respect to sale no. 1, this home sold in March 2006 for $595,000 from an asking/list price of $649,000 and then was flipped at $715,000 and involved a number of the same parties as other transactions investigated by the Board. While Respondent listed these transactions, he did not disclose this fact or analyze the sales. Additionally, the report listed a $156,000 down payment which is inaccurate. The 50" plasma TV with surround sound was not disclosed or adjusted. The results of this sale are not credible.

34. Comparable no. 2 was a luxury home which was on the market for 21 days when it sold for $625,000, not the reported sales price of $699,000. Additionally, the down payment stated of $1,250 is in error. Overall, the results for this sale are not credible.

35. With respect to comparable no. 3, this home was reported to have been added on to increasing its gross livable area by nearly 400 feet. However, Respondent's report used the home's smaller size without verification or explanation. Overall, the results for this sale are not credible.

36. Comparable no. 4 was sold as of the appraisal date in May 2006 and not April 28, 2006 as noted in the appraisal report. While the MLS noted that this home had a "Gourmet kitchen with breakfast room" the report stated it had a "Std.Kitchen." Further, Respondent noted the condition of this home as "Gd/Less Updt'g +$10,000" without explanation or support. Overall, the results for this listing/sale are not credible.

37. With respect to comparable no. 5, it is of superior quality and has been remodeled, the MLS did note that the home was in need of repairs. There was no disclosure or discussion of the sale's listing history (i.e. original listing price was $749,900, increased to $849,900 and then sold at $795,000. In addition, MLS and other

data were added to the workfile 13 days after the date of the report. Further, the gross living area adjustment is inconsistent with the same adjustments in other above-captioned cases investigated by the Board. Respondent states that "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum" All of the reports captioned above have these same statement without sales in the addenda or any abstraction data. The site value by abstraction is not credible and non-supportable and according to information obtained during the Board's investigation, the site size adjustments are not credible. In addition, there was no in-file data in support of the Cost Approach or the depreciation amount. Finally, the report states "Income Approach not applicable." The order form has handwritten "1004, 1007, 216." There was no rent schedule or Operating Income Statement in the workfile. Additionally, since this is the fourth report for the same owners in McCormick Ranch, it is obvious that the Income Approach applies.

**2979**

On or about December 13, 2010, the Board's investigation revealed the following:

38. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 8337 East Quarterhorse Trail, Scottsdale, AZ 85258 with a date of value of May 8, 2006 and a report date of May 6, 2006.

39. The subject property is another of the six properties in the McCormick Ranch area appraised by Respondent and involving many of the same parties to the transaction as other matters captioned above. The contract was for $725,000 showing sellers as Vranic Trust but there is no trust. The contract that was part of the workfile was only a partial contract. The report states "Executed contract dated 04/25/2006 with sales price @ $710,000." The value conclusion was $710,000.

40. The zoning was noted incorrectly and some of the MLS material noted a vinyl pool but that information was not disclosed in the report and there were no correlating adjustments in the sales comparison analysis.

41. In two different places in the report, Respondent noted that the kitchen was updated but these statements were not supported by the photos of the kitchen contained in the report.

42. With respect to comparable no. 1, parties to this transaction were also involved in other transactions captioned above but Respondent did not analyze or disclose this fact. Additionally, Respondent noted there was a $156,000 down payment but that is not correct. The size adjustment at $1.11 per square foot was without support and was inconsistent with other size adjustments made in other matters captioned above The 50" plasma TV with surround sound was not disclosed or adjusted. The results of this sale are not credible.

43. The sale price for comparable no. 2 was reported incorrectly. Further, the adjustment at $1.78 per square foot site size difference was not explained or supported and the statement relating to the $1,250 down payment was in error. Overall, the results of this sale are not credible.

44. With respect to comparable no. 3, the prior sale of this home was not adequately discussed and the sale price was substantially above the market price level of the subject and other sales. Under condition, the report stated that this sale was "Good/Updated" and "Std.Kitchen". However, the MLS indicates the remodeling was very significant and extensive, including upgrades to the kitchen. Overall, the results of this sale are not credible.

45. Comparable no. 4 is in a subdivision with numerous amenities but the amenities are not disclosed in the appraisal report. This home was recently remodeled and the kitchen was extensively redone but the appraisal report did not adequately note this.

Additionally, the site size adjustment was unsupported at $1.04 per square foot whereas the site adjustments in other matters referenced herein were at $2+/- per square foot. Overall, the results of this sale are not credible.

46. The gross living adjustments for this assignment were not credible or consistent with the other files referenced herein. Moreover, the site section states "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum." All the reports have these statements without sales in the addenda or any abstraction data. The site value by abstraction is not credible and non-supportable. The site size adjustments, given the above, are not credible. In addition, there was no in-file data in support of the Cost Approach of the depreciation amount.

47. Finally, the report states "Income Approach not applicable." The subject is a rental as is Sale No. 1. The client had requested and the report included a Rent Schedule and Operating Income Statement. Therefore, the Income Approach is applicable and necessary.

**2980**

On or about December 13, 2010, the Board's investigation revealed the following:

48. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 8411 North 86th Way, Scottsdale, AZ 85258-2512 with a report date of May 9, 2006 and an effective date of value of May 4, 2006.

49. This home was one of six properties in the McCormick Rand area appraised for Clint Rogers paying for and his wife Angle Rogers buying. The subject was a flip transaction. There were other flip transactions going back to March 2006 and the transactions should have been apparent to Respondent as the closing were public record.

50. The workfile had the subject's listing as a pending sale asking $675,000 but the contract was $689,000 but parties to previous transactions but these facts were not

disclosed in the appraisal report. The Respondent's conclusion of value was $690,000. The subject was purchased (recording on July 5, 2006) for $545,000 and was flipped the same day for $689,000. Moreover, the appraisal report failed to disclose the subject's 120-gallon tank/solar water heater or the roller shields, or that the contract stated RCA HD-ready TV.

51. With respect to comparable sale no. 1, the report listed the previous transactions but made no analysis or discloser of the fact many of the parties to the previous transactions were parties to other transactions disclosed herein or the subject was flipped and sold for substantially more than previously listed. Further, the report stated that there was a $156,000 down payment, this is incorrect. The site size adjustment was at $1.11 per square foot without support. The 50" plasma TV with surround sound was not disclosed or adjusted. Overall, the results of this sale are not credible.

52. Comparable sale no. 2 was a custom home on the market for 21 days when it sold for $625,000 and not the report's stated sales price of $699,000. The site size adjustment at $2.12 per square foot was not explained or supported. Moreover, the report states that this sale had "Std.Kitchen" and adjusted +$10,000 but the file contained no notations for verification of the standard kitchen. The report's statement that there was a down payment of $1,250 is in error. Overall, the results of this sale are not credible.

53. With respect to comparable no. 3, the MLS noted that this home had a "Gourmet kitchen with breakfast room" this report stated it had an average kitchen but in report no. 2978, Respondent noted "Std.Kitchen." Further, Respondent noted the condition of this home as "Gd/Less Updt'g +$10,000" without explanation or support. Overall, the results for this listing/sale are not credible.

54. Comparable sale no. 4 reportedly had an addition that increased its size from 2, 599 square feet to 3,000 square feet but the appraisal report utilized the smaller size without explanation or verification. This sale also had a 9' by 13' heated/cooled

workshop that Respondent did not disclose or adjust for. In addition, this sale had a 988 square foot site size difference, adjusted at $2.02 per square foot or $2,000 which is not credible. Under condition, this home was reported as "Good/Remodel" and the subject was noted as Average" without adjustment. Overall, the results of this sale are not credible.

55. With respect to comparable no. 5, the appraisal report stated the home was in "Average" condition without an adjustment but information from the MLS would indicate otherwise. In addition, the gross living adjustment for this sale is $60 per square foot which is not consistent with other McCormick Ranch size adjustments.

56. The site section states "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum." All the reports have these statements without sales in the addenda or any abstraction data. The site value by abstraction is not credible and non-supportable. The site size adjustments, given the above, are not credible. In addition, there was no in-file data in support of the Cost Approach of the depreciation amount.

57. Finally, the report states "Income Approach not applicable." The order form has handwritten "1004, 1007, 216." There was no rent schedule or Operating Income Statement in the workfile. Additionally, since this is the fourth report for the same owners in McCormick Ranch, it is obvious that the Income Approach applies.

**2981**

On or about December 13, 2010, the Board's investigation revealed the following:

58. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 9077 North 82nd Street, Scottsdale, AZ 85258 with an effective date of the report of June 7, 2006 and a date of value of June 14, 2006.

59. The subject's previous listing was not disclosed by Respondent. Also, the incorrect sales price was listed in the report.

60. The date of value of the report was June 14, 2006 but the contract for this property was dated May 18, 2006 and transmitted to the Respondent on June 20, 2006. The addendum, also transmitted on June 20, 2006, amended the sales price to $750,000. The appraisal report concluded to $750,000.

61. In his reply to the complaint, Respondent stated that "I was told it was a primary residence." However, the report contained a Rental Schedule and Operating Income Statement, which is contrary to Respondent's statement.

62. Respondent's reply and reference to the "Relationship Letter" are not credible. Any research of the prior transactions dating back to march 2006 and including the sale on East San Bruno closing on March 10, 2006 and used in nearly all of these transactions would have revealed the flips to Respondent.

63. Moreover, the invoice states that this appraisal was paid for on May 10, 2006 or prior to the contract date of May 18, 2006 and the amended contract transmitted on May 20, 2006. Again, Respondent's statements are not supported or credible.

64. While Respondent did disclose that the subject backed to Hayden Road, he stated that no negative adjustments were warranted for external obsolescence because, in his opinion, the large lot and block fencing minimized the impact of the traffic noise. However, the Board's investigation revealed that Respondent's statements are not credible and the Hayden Road traffic noise was easily heard from the front of the home.

65. Respondent noted that the subject's location is "Good" but states all of the sales' locations are "Average." No adjustments were made.

66. With respect to comparable sale no. 1, Respondent did not verify the home's addition and the discrepancy in square footage and the square footage was inappositely adjusted at $60 per square foot. In addition, the report stated under condition

"Ave/Less Updt.+$25" without explanation or support. Moreover, this sale was adjusted upward for half-bath at +$10,000 without explanation or support and +$15,000 for not pool, again without explanation or support. Finally, the site size adjustment is not credible.

67. Comparable sale no. 2 was extensively remodeled but the appraisal report failed to disclose the remodeling. Overall, the results of the sale are not credible.

68. Comparable sale no. 3 was also remodeled and has access to greenbelt area to the rear. The results for this sale are not credible.

69. Comparable sale no. 4 included an addition but the appraisal report relied on the former square footage without explanation or verification. In addition, Respondent did not disclose the 9' by 13' heated/cooked workshop, office/workout room with separate entrance.

70. According to the MLS, comparable sale no. 5 is in a subdivision with a number of amenities but the appraisal report omits these amenities. Nor did the appraisal report accurately reflect the extensive remodeling of this home. Further, the site adjustment was unsupported at $2 per square foot. Overall, the results of this sale are not credible.

71. The site section states "Land value was based on abstraction. Summary of comparable land sales/listings, see addendum." All the reports have these statements without sales in the addenda or any abstraction data. The site value by abstraction is not credible and non-supportable. The site size adjustments, given the above, are not credible. In addition, there was no in-file data in support of the Cost Approach of the depreciation amount.

72. Finally, the report states "Income Approach not applicable." The order form has handwritten "1004, 1007, 216." There was no rent schedule or Operating Income Statement in the workfile. The subject is a rental as is Sale no.1. The client had

requested and the appraisal had a Rent Schedule and Operating Income Statement. Therefore, the Income Approach is applicable and necessary.

**2982**

On or about December 13, 2010, the Board's investigation revealed the following:

73. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 11014 North Miller Road, Scottsdale, AZ 85260 with an effective date of value of August 22, 2006.

74. Respondent notified the Board that the original appraisal had been revised and provided to the Board a copy of an additional appraisal report also dated April 22, 2006. However, file data indicates the revision was Late May 2006.

75. The revised report concludes at $1,000,000, which is a revision from some prior report at $1,200,000.

76. Additionally, in his response, Respondent states that he was paid by Clint Rogers by credit care ($595). On his invoice to Global Mortgage, it states, "Paid by credit card" ($495) on 3/28/2006 or prior to the reported contract date of 4/11/2006 and prior to the appraisal order date of 4/13/2006. This raises the issue of advocacy or representing the cause or interest of another per 2005 USPAP definitions and Ethics Rule, Conduct.

77. There was no Income Approach to Value to non-owner-occupied home. There were at least three other known appraisals performed by the Respondent for the buyer to this assignment; and at the revision of this subject property reports as May 28, 2006, at least six other properties for this buyer and client.

78. The report states in the contract section, "Executed contract dates 4/11/2006 with the sale price agreed upon @ $1,200,000. The workfile does not contain an executed contract. It does contain escrow instructions based on fax transmission date of April 24, 2006 or two days after the report date of April 22, 2006.

79. Comparable sale no. 1 was marketed as "...over two acres of land that can be split into two lots." The sale with a site of 2.39 acres versus the subject site at $1.01 acre was valued by the Respondent at $700,000. It was adjusted at -$180,000 ($2 per square foot). This is not credible for a site that can be split and sold. Moreover, the adjustment of +$20,000 for room count of subject 8/3/3 versus this sale at 6/3/2 was not supported or explained and the adjustment was not credible. Also, "Average" condition for this sale and the subject is not credible. The age adjustment at $1,000 per year or +$15,000 was not explained or supported. According to the County Assessor records, there were guest quarters (enclosed garage) and a 450 square foot pool for this property but the report stated the sales had "Garage-3" in error and failed to discuss the guest quarters and the pool. According to the report, under the sales or financing concession, Respondent stated "$375,000 Dn Pt New Cov Ln." However, per the affidavit, there was no down payment and this was seller financed. The report used an MLS photo; if the Respondent had inspected this sale, it would be obvious that the parcel had been split with new residential construction taking place. The size adjustment of $80 per square foot is not credible when contrasted and compared to the Cost Approach's dwelling cost new at $95 per square foot. Finally, the adjustment process is not credible and the adjusted results for this sale are not credible.

80. Comparable sale no. 2 was adjusted for room count at 8/5/2 versus the subject's 8/3/3 at -$20,000. This was not explained or supported and is not credible that a bath would command $20,000. Again, size adjustment at $80 per square foot versus cost new at $95 per square foot is not credible. The MLS states size on this home is 2,961 square feet while the assessor records state 2,361 square foot. The Respondent does not disclose or explain this discrepancy. Overall, the results of this sale are not credible.

81. Comparable sale no. 3 is located in McCormick Ranch and the Respondent failed to adjust for the annual homeowner's fee. The site size adjustment of +$90,000 or

$3.01 per square foot was not explained nor supported. The condition adjustment "Good/Remodel -$100,000" was not explained or supported although this sale did have a prior sale approximately one year before at $565,000 versus the resale at $1,000,000. This prior sale/resale was not analyzed in the report and data in the workfile for this sale was dated one month after the date of the report. Furthermore, the $80 per square foot size adjustment again is not credible when contrasted and compared with the main dwelling cost new of $95 per square foot. There was also a discrepancy in records relating to the square footage that Respondent does not disclose or explain adequately. Overall, the results of this sale are not credible.

82. Comparable no. 4 was listed for one month, off the market on 5/3/2006 and while the original report would not have had this listing, the revised report dated May 28, 2006 should have reported this listing and expiration but did not. Additionally, there was no explanation or support for listing discount of $60,000 or 5%+-. Additionally, there was no explanation or support for Respondent's "Good/Updated -$100,000" condition adjustment and again the $80 per square foot adjustment was not credible. There was another discrepancy relating to gross living area size that Respondent did not address or disclose. The MLS stated that this sale had "extended garage w/expoxy floor" and "attached garage cabinets" yet the Respondent made the same $10,000 adjustment. Overall, the results of this sale are not credible.

83. With respect to comparable sale no. 5, Respondent's listing adjustment, bath adjustment and gross living area size adjustment were all unsupported and not credible. There was also a discrepancy in gross living area square footage that was not disclosed or discussed by Respondent. Overall, the results of this sale are not credible.

84. Comparable sale no. 7 had several upgrades and was remodeled but these were not disclosed nor were adjustments made. This home's 20'x 23' workshop, Pebble Tec pool, huge patios, built0in BBQ and firepit were not disclosed or adjusted for.

Again, the $80 per square foot adjustment is not credible. The report did not contain a photo of this sale. Overall, the results of this sale are not credible.

85. Comparable sale no. 8 was torn down and rebuilt in 2008 and is now over 6,200 square feet in living area. There was no photo of this sale in the report. This appears to be a value-in-use tear-down with site improvements used to rebuild. The results of this sale are not credible.

86. With respect to comparable sale no. 9, there was a $40,000 down payment, not $160,000 as stated in the report. The report failed to adjust for the workshop and there was no explanation or support for the age and size adjustments. Also, there was no photo of this sale in the report and the field notes consisted only of the floor plan drawing. There was no Income Approach. Overall, the results of this sale are not credible.

## CONCLUSIONS OF LAW

Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State of Arizona must comply with the standards of practice adopted by the Board. The Standards of Practice adopted by the Board are codified in the USPAP edition applicable at the time of the appraisal.

### 2975

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-6(b); Standards Rule 2-2(b)(ix); Standards Rule 2-2(b)(xi); The Departure Rule; and Standards Ethic Rule---Recordkeeping and Conduct.

### 2976

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-4(b)(i); Standards Rule 1-5; Standards Rule 2-2(b)(ix) and Standards Ethic Rule---Recordkeeping and Conduct.

**2977**

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-4(c); Standard Rule 1-6(b); Standards Rule 2-2(b)(ix); Standards Rule 2-2(b)(xi); The Departure Rule; and Standards Ethic Rule---Recordkeeping and Conduct.

**2978**

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-4(c); Standard Rule 1-6(b); Standards Rule 2-2(b)(ix); Standards Rule 2-2(b)(xi); The Departure Rule; and Standards Ethic Rule---Recordkeeping and Conduct.

**2979**

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-4(c); Standards Rule 2-2(b)(ix); Standards Rule 2-2(b)(xi); The Departure Rule; and Standards Ethic Rule---Recordkeeping and Conduct.

**2980**

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-4(c); Standards Rule 1-6(b); Standards Rule 2-2(b)(ix); Standards Rule 2-2(b)(xi); The Departure Rule; and Standards Ethic Rule---Recordkeeping and Conduct.

**2981**

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-4(c); Standards Rule 2-2(b)(ix); Standards Rule 2-2(b)(xi); The Departure Rule; and Standards Ethic Rule---Recordkeeping and Conduct.

**2982**

The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(d); Standards Rule 1-2(f); Standards Rule 1-4(b(i),(ii) and (iii); Standards Rule 1-4(c); Standards Rule 2-1(a) and (b); Standards Rule 2-2(b)(ix); and Standards Ethic Rule---Recordkeeping and Conduct.

**ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, the parties agree to the following:

1. **Upon the effective date of this Consent Agreement, Respondent's Certificate as a Certified Residential Appraiser shall be suspended for a period of thirty (30) days. The period of suspension shall begin on June 1, 2011 and continue through and include June 30, 2011. During the period of suspension, Respondent shall not issue a verbal or written appraisal, appraisal review or consulting assignment involving real property in the State of Arizona.**

2. Respondent shall successfully complete the following education within **six (6) months** of the effective date of this Consent Agreement: **Five (5) hours of Business Practices to include ethics.** The education under this paragraph **may not** be counted toward the continuing education requirements for the renewal of Respondent's certificate. **The coursework may be completed through distance education.** The same class may not be repeated to fulfill the education requirements of this Consent Agreement

3. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required course.

4. At the conclusion of the suspension of Respondent's certificate and beginning on July 1, 2011, his certificate is **immediately placed on probation for a minimum period of six (6) months.** During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.

5. During the term of probation, Respondent shall: (a) demonstrate resolution of the problems that resulted in this disciplinary action; and (b) otherwise comply with the terms of this Consent Agreement.

6. During the period of probation, Respondent shall complete a minimum of **twelve (12) appraisal reports** under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's mentor ("Mentor").

7. During the probationary period, the Respondent shall not issue a verbal or written appraisal, appraisal review, or consulting assignment without prior review and approval by a Mentor. Each report shall **either** be signed by the Mentor as a supervisory appraiser **or** the Mentor must complete a written review of each report ensuring that the report complies with USPAP and the Board's statutes and rules. The Mentor's review shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard 3 review shall be completed before the report is issued to the client. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the

Respondent and approved by the Mentor before the report is issued. The Mentor's written Standard 3 review shall be maintained by the Mentor and made available to the Board upon request.

8. The Mentor must be approved by the Board and is subject to removal by the Board for nonperformance of the terms of this Consent Agreement. The Mentor may not have a business relationship with Respondent except for the Mentor/Mentee relationship nor may the Mentor be related to Respondent. Any replacement Mentor is subject to the Board's approval and the remaining terms of this Consent Agreement. The Board's Executive Director may give temporary approval of the Mentor until the next regular meeting of the Board.

9. Not more than **30 days** after the effective date of this Consent Agreement, Respondent shall submit to the Board the name and resume of an Arizona Certified Residential or Arizona Certified General Appraiser who is willing to serve as Respondent's Mentor together with a letter from the potential Mentor agreeing to serve as Respondent's Mentor. If requested by Board staff, Respondent shall continue to submit names, resumes, and letters agreeing to serve as Mentor until a Mentor is approved by the Board. Any Mentor must be approved in writing by the Board.

10. Respondent shall bear all costs and expenses associated with the mentorship and incurred by attending the coursework set forth above.

11. The Mentor shall submit monthly reports to the Board for each calendar month during Respondent's probationary period reflecting the quantity and quality of Respondent's work, including, but not limited to, improvement in Respondent's practice and resolution of those problems that prompted this action. The Mentor's report shall be filed monthly beginning the 15th day of the first month following the start of Respondent's probationary period and continuing each month thereafter until termination of the probationary period by the Board. **Even if the Mentor reviews no appraisals**

**during a given month, a report stating that no appraisals were reviewed or approved must be submitted.** It is the Respondent's responsibility to ensure that the Mentor submits his/her reports monthly. If the monthly reporting date falls on a Saturday, Sunday, or holiday, the report is due on the next business day. The monthly report may be filed by mail or facsimile.

12. The Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that he has completed within the prior calendar month by property address, appraisal type, valuation date, the Mentor's review date, the date the appraisal was issued, and the number of hours worked on each assignment. **The log shall designate who the client is (i.e. "lender", "borrower" or "other")** The report log shall be filed monthly beginning the 15th day of the first month following the start of Respondent's probationary period and continuing each month thereafter until the Board terminates the probation. If the log reporting date falls on a Saturday, Sunday, or holiday, the report log is due on the next business day. **Even if Respondent performs no appraisals within a given month, he must still file an appraisal log with the Board showing that no appraisals were performed.** The monthly log report may be filed by mail or facsimile.

13. The Board reserves the right to audit any of Respondent's reports and conduct peer review, as deemed necessary, during the probationary period. The Board may, in its discretion, seek separate disciplinary action against the Respondent for any violation of the applicable statutes and rules discovered in an audit of the Respondent's appraisal reports provided to the Board under the terms of this Consent Agreement.

14. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 15, and (b) the Board terminates the probation and mentorship. Upon petition by the Respondent for

termination of the probation and mentorship, the Board will select and audit 3 of Respondent's appraisal reports.

15. At the end of **six (6) months** from the start of the probationary period the Respondent may petition the Board for termination of his mentorship and probation. If the Board determines that Respondent has not complied with **all** the requirements of this Consent Agreement, the Board, at its sole discretion, may either: (a) continue the probation, including mentorship; or (b) institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial action.

16. Respondent shall not act as a supervising appraiser for other appraisers or trainees, nor shall he act as a mentor, during the term of the suspension and probation. Respondent shall also not teach any course related to real estate appraisals during the term of the suspension and probation.

17. Respondent shall comply with the Uniform Standards of Professional Appraisal Practice in performing all appraisals and all Board statutes and rules.

18. If, between the effective date of this Consent Agreement and the termination of Respondent's probation by the Board, Respondent fails to renew his certificate while under this Consent Agreement and subsequently applies for a license or certificate, the remaining terms of this Consent Agreement, including probation and mentorship, shall be imposed if the application for license or certificate is granted.

19. Respondent has read and understands this Consent Agreement as set forth herein, and has had the opportunity to discuss this Consent Agreement with an attorney or has waived the opportunity to discuss this Consent Agreement with an attorney. Respondent voluntarily enters into this Consent Agreement for the purpose of avoiding the expense and uncertainty of an administrative hearing.

20. Respondent understands that he has a right to a public administrative hearing concerning each and every allegation set forth in the above-captioned matter, at which administrative hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent freely and voluntarily relinquishes all rights to such an administrative hearing, as well as all rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action, concerning the matters set forth herein. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

21. Respondent understands that this Consent Agreement, or any part thereof, may be considered in any future disciplinary action against him.

22. The parties agree that this Consent Agreement constitutes final resolution of this disciplinary matter.

23. Time is of the essence with regard to this agreement.

24. If Respondent fails to comply with the terms of this Consent Agreement, the Board shall properly institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial actions. Respondent agrees that any violation of this Consent Agreement is a violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any of the provisions of the Board's statutes or the rules of the Board for the administration and enforcement of its statutes.

25. Respondent understands that this Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver, express or implied, of the Board's statutory authority or jurisdiction regard any other pending or future investigation, action or proceeding. Respondent also understands that acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this state from instituting other civil

or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

26. Respondent understands that the foregoing Consent Agreement shall not become effective unless and until adopted by the Board of Appraisal and executed on behalf of the Board. Any modification to this original document is ineffective and void unless mutually approved by the parties in writing.

27. Respondent understands that this Consent Agreement is a public record that may be publicly disseminated as a formal action of the Board.

28. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations in the above-referenced matter to constitute to a **Level IV Violation.**

**DATED** this 31 day of MAY, 2011.

John S. Colman
Respondent

Dan Pietropaulo
Executive Director
Arizona Board of Appraisal

**ORIGINAL** of the foregoing filed
this 31 day of May, 2011 with:

Arizona Board of Appraisal
1400 West Washington Street, Suite 360
Phoenix, Arizona 85007

**COPY** of the foregoing mailed regular
and certified mail 7009 1680 0000 7387 5724
this 31 day of May, 2011 to:

Mr. John S. Colman
12620 E. Altadena Drive
Scottsdale, AZ 85259

**COPY** of the foregoing sent or delivered
this 31 day of May, 2011 to:

Jeanne M. Galvin
Assistant Attorney General
Arizona Attorney General's Office
1275 West Washington, CIV/LES
Phoenix, Arizona 85007

By: _____
1884348
Rebecca M. Lozar
Regulatory Compliance Administrator