BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

In the Matter of: **KYM R. GAUDETTE** Certified Residential Appraiser Certificate No. 20522	Case Nos. 2280/2281/2282/2283/2284/2285/2286/2287 2288/2289/2290/2291/2292/2293/2294/2295 2296/2297/2298/2299/2300/2301 **CONSENT AGREEMENT AND ORDER**

In the interest of a prompt and judicious settlement of the above-captioned matter 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), Kym R. Gaudette, ("Respondent"), holder of certificate no. 20522 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 September 20, 2007, the Board discussed Case Nos. 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, and 2301 regarding Respondent. After reviewing the investigator's reports, as well as the information presented, the Board voted to deny Respondent's application for renewal of her certification as a residential appraiser.

Respondent, through her attorney, Andrew Lynch, requested an informal settlement conference pursuant to Title 41. The settlement conference was held on November 5, 2007. A Consent Agreement and Order were presented to Ms. Gaudette and her attorney subsequent to the settlement conference. After further negotiations, the Board and Ms. Gaudette enter into this Consent Agreement and Order of Discipline ("Consent Agreement") to renew her certificate as a residential appraiser.

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 license as a Certified Residential Appraiser in the State of Arizona, Certified License No. 20522, issued on, September 16, 1993 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. She further acknowledges that at such formal hearing she could present evidence and cross-examine witnesses. Respondent irrevocably waives her 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 these matters.

5. This Consent Agreement shall be subject to the approval of the Board and will 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.

7. Respondent does not admit the following Findings of Fact or Conclusions of Law. The Board has not alleged that Respondent engaged in any intentional fraud or intentional misrepresentations. However, sufficient evidence exists from which a finder of fact could determine that the Findings of Fact and Conclusions of Law set forth in the attached Board Order occurred and that the conduct described in the attached Order may be conduct constituting grounds for disciplinary action as provided in A.R.S. § 32-3635 and the Uniform Standards of Professional Appraisal Practice adopted pursuant thereto and the rules adopted in accordance thereof found in A.A.C. R4-46-101 *et seq.*

FINDINGS OF FACT

1. The following numbered cases involve appraisals by Respondent on the corresponding properties and dates:

Case No.	Property/date
a. 2280	9212 W. Coolidge Street, Phoenix, AZ (2/1/06)

b. 2281	573 W. Enchanted Desert Drive Casa Grande, AZ (2/1/06)
c. 2282	2846 W. Sunshine Butte Drive, Queen Creek, AZ (2/7/06)
d. 2283	1654 E. Dust Devil Dr., Queen Creek, AZ (1/31/06)
e. 2284	616 W. Lucky Penny Place, Casa Grande, AZ (2/9/06)
f. 2285	597 W. Jardin Loop, Casa Grande, AZ (2/1/06)
g. 2286	10611 W. Zak Road, Tolleson, AZ (2/9/06)
h. 2287	1856 E. Cowboy Cove Trail, Queen Creek, AZ (1/31/06)
i. 2288	29872 N. Yellow Bee Dr., Queen Creek, AZ (2/17/06)
j. 2289	40042 N. Zampino St., Queen Creek, AZ (1/31/06)
k. 2290	35454 N. Barzona Trail, Queen Creek, AZ (2/25/06)
l. 2291	30051 N. Royal Oak Way, Queen Creek, AZ (2/17/06)
m. 2292	2423 S. Devonna Lane, Tolleson, AZ (2/15/06)
n. 2293	42358 W. Hillman Dr., Maricopa, AZ (2/16/06)
o. 2294	2846 W. Sunshine Butte Dr., Queen Creek, AZ (2/7/06)
p. 2295	655 W. Viola St., Casa Grande, AZ (2/16/06)
q. 2296	6016 S. 22nd Dr., Phoenix, AZ (2/22/06)
r. 2297	8716 S. 50th Lane, Laveen, AZ (2/16/06)
s. 2298	2582 N. Milly Place, Casa Grande, AZ (2/17/06)
t. 2299	784 E. Horizon Heights Dr., Queen Creek, AZ (3/22/06)
u. 2300	1522 E. Bowman Dr., Casa Grande, AZ (3/11/06)
v. 2301	22762 W. Cocopah, Buckeye, AZ (3/16/06)

2. All of the above-referenced complaints were received by the Board on or about November 20, 2006 and alleged that Respondent violated Arizona appraisal statutes and that Respondent defrauded the complainant by artificially inflating the reports as part of a fraudulent scheme, thereby causing complainant significant and substantial damages as a result.

3. The Board's investigation reveals a number of the same deficiencies in each of the reports prepared by Respondent. The following are the deficiencies noted by the Board and the corresponding cases in which they occurred.

4. Respondent, by not considering other available model match comparable sales from within the immediate subject market area, is believed to have committed a substantial error that could have arguably resulted in a different reported opinion of market value; **2280, 2286, 2292, and 2296**

5. The report does not include an opinion or estimate of reasonable exposure time; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300 and 2301.**

6. The subject property was listed for numerous prices preceding the signing of the contract and would have had a pending MLS classification at the time of appraisal. The Respondent did not state that the subject property was listed at the date of the appraisal. Additionally, the Respondent failed to analyze the current subject listing, particularly in light of the prior listing history of the subject property during the previous two months. Finally, the Respondent did not analyze the contract sale price of the subject

property, particularly in relation to the listing history of the subject property; **2280, 2281, 2284, 2285, 2286, 2292, 2295, 2297, 2300 and 2301.**

7. Respondent states that the subject property had previously sold, however, stating the previous sale price of the subject property falls considerably short of analyzing the previous sale of the subject property, particularly in light of subsequent listing history of the subject property leading up to the purchase contract and the fact that there were other comparable sales, some model match comparable sales in the immediate subject market area that, combined with the prior sale of the subject property, would arguably indicate a market value different from that provided in the report; **2280, 2281, 2285, 2286, 2292, 2293, 2297 and 2301.**

8. The report is misleading as a result of the fact the Respondent, in the presentation of comparable sales data, would have the reader believing that the most comparable sales data was of comparable sales outside the immediate subject subdivision phase having been constructed by different builders. Additionally, the Respondent, by using unsupported cost data in the completion of the Cost Approach, concluded to a Cost Approach conclusion that peers would not consider reasonable; **2280**

9. The Respondent included data in support of her conclusion of market value, however, she did not include data, discussion, and analyses of other relevant comparable market data that other people would consider relevant in the appraisal of the subject property; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300 and 2301.**

10. Based on a consideration of the information available, it would seem reasonable to believe that the Respondent, by not analyzing model match comparable sales data from the immediate subject subdivision phase and analyzing the subject listing history in the time leading up to the contract, may have communicated an appraisal report that was misleading; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2292, 2293, 2296, and 2297.**

11. The report is misleading as a result of the fact the Respondent, in the presentation of comparable sales data, failed to provide an analysis of recently closed comparable sales, one of which appears to be a model match from within the immediate subject subdivision. Additionally, the Respondent, by using unsupported cost data in the completion of the Cost Approach, concluded to a Cost Approach conclusion that peers would not consider reasonable; **2280**

12. The report cannot be fully understood without consideration, discussion, and analysis of other recent comparable sales, some or all of which appear to be model matches, within the immediate subject subdivision. Including the additional comparable sales data from the subject market area would arguably lead a reader to believe that the market value was something less than the figure reported in the report. Additionally, the report did not include factual and supportable information from the Marshall & Swift Residential Cost Handbook to permit a reader to understand the report; **2280, 2282, 2283, 2284, 2285, 2287, 2288, 2293, 2295, 2299, 2300 and 2301.**

13. Respondent, by not considering other available comparable sales from within the immediate subject market area, some of which are believed to be model

matched, is believed to have committed a substantial error that could have arguably resulted in a different reported opinion of market value; **2281, 2282, 2283, 2284, 2285, 2295, 2298, 2300 and 2301.**

14. Respondent is reasoned to have incorrectly computed the Replacement Cost New of the subject property, or the subject garage **(2296)** resulting in overstating the conclusion of market value from the Cost Approach; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2300 and 2301.**

15. Respondent provided an incorrect address and APN for Comparable Sale #1. Respondent also failed to adjust Comparable Sale #3 for having a swimming pool. This would obviously result in a different indication of market value from this comparable sale. Additionally, Respondent understated the pool adjustment for Comparable Sale #2. A paired sales analysis of Items #1 and #2 might suggest a greater adjustment is necessary for the swimming pool in Sale #2. The site size adjustment is considered low on Comparable #2 in light of the appraised value of the subject lot. Also, all three comparable sales used in the report are reasoned to have superior appeal due to site location; **2282**

16. The Respondent's calculated Replacement Cost New figure per square foot (Average Quality) for the subject improvements is not supported by information from Marshall & Swift Residential Cost Handbook, the appraisal industry standard for completing the Cost Approach on residential properties. In addition, one or more line item additions (i.e. garage, covered patio, spa or porch) included in the Cost Approach is

not considered reasonable and supportable; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2292, 2293, 2294, 2295, 2297, 2298, 2300 and 2301.**

17. The subject property would have had a pending MLS classification at the time of appraisal. The Respondent did not state that the subject property was listed at the date of the appraisal. Additionally, the Respondent failed to analyze the current subject listing, particularly in light of the prior listing history of the subject property during the previous two months. Finally, the Respondent did not analyze the contract sale price of the subject property, particularly in relation to the listing history of the subject property; **2282, 2288, 2289, 2290, 2291, 2293, 2294, and 2299.**

18. Respondent states that the subject property had previously sold, however, simply stating the previous sale is not the same as analyzing the sale. This is particularly important in light of the fact that there was at least one additional recent comparable sale that, combined with the prior sale of the subject property, would arguably indicate a market value different from that provided in the report; **2282, 2283, 2287, 2288, 2290, 2298, and 2299.**

19. The report is misleading as a result of the fact the Respondent, in the presentation of comparable sales data, failed to provide an analysis of additional comparable sales from within the immediate subject subdivision or in close proximity thereto, that would arguably suggest a different market value; **2282, 2283, 2287, 2288, 2289, 2290, 2294, 2299, and 2300.**

20. Respondent is reasoned not to have adequately adjusted Comparable Sales #1 and #3 for location on a golf course. It is also believed that Respondent understated

the pool adjustment for Comparable Sale #2. There is also a basis for making a site size adjustment to the comparable sales used by Respondent; **2283**

21. The Respondent, by using unsupported cost data in the completion of the Cost Approach, concluded to a Cost Approach conclusion that peers would not consider reasonable; **2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, and 2301.**

22. Respondent did not state or analyze on Page 2 of the report that the subject property had previously sold August 9, 2005. This is particularly important in light of the subsequent listing history of the subject property leading up to the December 2005 purchase contract and the fact there were other recent comparable sales, one of which is believed to be a model match, in the immediate subject market area that, combined with the prior sale of the subject property, would arguably indicate a market value different from that provided in the report; **2284.**

23. The report is misleading as a result of the fact the Respondent, in the presentation of comparable sales data, failed to provide an analysis of other recently closed comparable sales, one or more of which appears to be a model match, from within the immediate subject subdivision; **2284, 2285, 2286, 2292 and 2301.**

24. The report cannot be fully understood without consideration and discussion of other model match comparable sales within the immediate subject subdivision. Including the additional model match comparable data from the subject market area would arguably lead a reader to believe that the market value was something less than the figure reported in the report. Additionally, the report did not include factual and

supportable information from the Marshall & Swift Residential Cost Handbook to permit a reader to understand the report; **2280, 2286, 2292, 2296, and 2297.**

25. Respondent, by not considering at least two **(2289 and 2290)**, three **(2287)** or four **(2288 and 2299)** other available comparable sales from within the immediate subject market area, is believed to have committed a substantial error that could have arguably resulted in a different reported opinion of market value; **see case nos. above.**

26. Respondent is not reasoned to have adequately adjusted Comparable Sales #1 and #3 for location on a golf course. It is also believed that Respondent understated the pool adjustment for Comparable Sale #2. There is also a basis for making a site size adjustment to Comparable Sale #2. Comparable Sale #4 could not have been a pending sale at the date of the appraisal (January 31, 2006) since the transaction did not reach pending status, according to the MLS, until February 8, 2006. The actual closing date was April 18, 2006, not March 10, 2006, as is stated in the report; **2287**

27. The subject property would have had a pending MLS classification at the time of appraisal. The Respondent did not state that the subject property was listed at the date of the appraisal, however, the Respondent states on Page 2 of the report that the subject property had been listed or sold in the past 36 months. Additionally, the Respondent failed to analyze the current subject listing, particularly in light of the prior listing history of the subject property during the previous months. Finally, the Respondent did not analyze the contract sale price of the subject property, particularly in relation to the listing history of the subject property; **2287**

28. Respondent is not reasoned to have adequately adjusted Comparable Sales #2, #3, and #4 for location on a golf course. It is also believed that Respondent understated the pool adjustment for Comparable Sales #2 and #3. There is also a basis for making a site size adjustment to all of the comparable sales. Further, Respondent incorrectly calculated the rental income that was estimated to be obtainable from the subject property. Respondent also included replacement cost for a pool, however, the subject property does not have a pool; **2288**

29. Respondent included Comparable Sale #1 as a sale, however, Pinal County records are not believed to show this property selling as reported by Respondent. Respondent also failed to adjust Comparable Sale #2 for having superior upgrades. This would obviously result in a different indication of market value from this comparable sale; **2289**

30. The report did not include a complete Location Map for the subject and all comparable sales. The report also included incorrect document numbers for the comparable sales, as well as incorrect dates of sale for Comparable Sales #2 and #3. The date of sale for Comparable Sale #1 is also incorrect, as this sale did not occur as reported by Respondent. Respondent also provided incorrect recording numbers for all three sales; **2289**

31. The Respondent's Replacement Cost New figure per square foot (Average Quality) for the subject improvements (i.e. a garage) is not supported by information from Marshall & Swift Residential Cost Handbook, the appraisal industry standard for

completing the Cost Approach on residential properties; **2288, 2289, 2290, 2291, 2296 and 2299.**

32. The report cannot be fully understood without consideration, discussion, and analysis of other recent comparable sales (some believed to be model matches—**2294**) from within the immediate subject subdivision, and proper reporting and adjusting of the selected comparable sales used in the appraisal report. Including the additional comparable sales from the subject market area would arguably lead a reader to believe that the market value was something less than the figure reported in the report. Additionally, the report did not include factual and supportable information from the Marshall & Swift Residential Cost Handbook to permit a reader to understand the report; **2289, 2290 and 2294.**

33. Respondent is not reasoned to have adjusted Comparable Sales #1 for location backing to a common area. Respondent also did not adjust for the presence of a pool or a three stall garage (tandem) for Comparable Sale #3. There is reasoned to be a basis for making a site size adjustment to all of the comparable sales. Additionally, the Respondent incorrectly calculated the rental income that was estimated to be obtainable from the subject property; **2290**

34. Respondent states on Page 2 of the report that the subject property had previously sold March 21, 2005, and September 6, 2005, however, simply making a statement regarding the previous sale is not the same as analyzing the sale; **2291**

35. The report did not include factual and supportable information from the Marshall & Swift Residential Cost Handbook to permit a reader to understand the report; **2291.**

36. Respondent, by not considering at least two **(2294)** or three **(2293)** other available comparable sales from within the immediate subject market area, all considered model matches to the subject property, is believed to have committed a substantial error that could have arguably resulted in a different reported opinion of market value; **2293 and 2294.**

37. The Respondent failed to adjust Comparable Sale #2 for having three baths vs. 2.5 baths in the subject property, and Sale #3 for having a golf course view. This would obviously result in a different indication of market value from this comparable sale; **2293**

38. The report is misleading as a result of the fact that the Respondent, in the presentation of comparable sales data, failed to provide an analysis of three additional seemingly model match comparable sales from within the immediate subject subdivision; **2293**

39. The Respondent provided an incorrect sale price for Comparable Sale #2, utilized the incorrect sale price in arriving at an adjusted market value for the subject property, as well as failed to correctly analyze this Comparable. The Respondent has incorrectly plotted the location of the subject and comparable sales on the Location Map. The Respondent also failed to adjust Comparable Sale #2 for having three a three stall garage. This would obviously result in a different indication of market value from this

comparable sale. It is also believed that Comparable Sale #1 would logically have received a downward site size adjustment; **2294**

40. Respondent states on Page 2 of the report that the subject property had previously sold June 6, 2005, however, she did not note the subsequent sale of the subject property on September 15, 2005 for $277,900. Additionally, simply stating the previous sale price of the subject property is not the same as analyzing the sale. This is particularly important in view of the fact that there were additional recent comparable sales that, combined with the prior sale of the subject property, would arguably indicate a market value different from that provided in the report; **2294**

41. The Respondent incorrectly calculated the rental income that was estimated to be obtainable from the subject property. Additionally, the report included errors in the adjustment process, including site size for Comparable Sale #3, the fireplace for Comparable Sale #1, and the pool for Comparable Sale #2; **2295**

42. The Respondent did not analyze other recent comparable sales data, all of which were constructed by the subject builder and located in, or near, the subject subdivision that possibly would have provided a market value indication different from that reported in the appraisal report; **2295**

43. Respondent states on Page 2 of the report that the subject property had previously sold September, 2005, however, she did not note and analyze the sale of the subject property dated November 10, 2004 for $184,147. This sale, in addition to the previously cited sale of the subject occurred within the three years prior to the effective date of the appraisal. Additionally, simply stating the previous sale price of the subject

property is not the same as analyzing the sale. This is particularly important in view of the subsequent listing history of the subject property leading up to the January 2006 purchase contract and the fact that there were other recent comparable sales in the immediate subject market area that, combined with the prior sale of the subject property, would arguably indicate a market value different from that provided in the report; **2295**

44. The report is misleading as a result of the fact that the Respondent, in the presentation of comparable sales data, failed to provide an analysis of other recently closed comparable sales from the subdivision by the same builder; **2295 and 2297**

45. The Respondent incorrectly calculated the rental income that was estimated to be obtainable from the subject property; **2295 and 2297**

46. Based on a consideration of the information available, it would seem reasonable to believe that the Respondent, by not analyzing comparable sales data from the immediate subject subdivision and analyzing the subject listing history in the time leading up to the contract, may have communicated an appraisal report that was misleading; **2294, 2295, 2298 and 2300.**

47. The Respondent failed to adjust Comparable Sales #1and #3 for swimming pools, and Comparable Sale #2 for a fireplace; **2296**

48. The Respondent did not analyze recent model match comparable sales data from within the subject subdivision that possibly would have provided a market value indication different from that reported in the appraisal report; **2296**

49. The subject property was listed for numerous prices preceding the signing of the contract and would have had a pending MLS classification at the time of appraisal.

The Respondent did not state that the subject property was listed at the date of the appraisal. Additionally, the Respondent failed to analyze the current subject listing, particularly in light of the prior listing history of the subject property during the previous two months. Finally, the Respondent did not analyze the contract sale price of the subject property, particularly in relation to the listing history of the subject property, nor did she comment on or analyze two previous sales of the subject property within the three years prior to the date of the appraisal; **2296**

50. The report is misleading as a result of the fact that the Respondent, in the presentation of comparable sales data, failed to provide an analysis of seven recently closed comparable sales from within the immediate subject subdivision; **2296**

51. Respondent, by not considering other available model match comparable sales from within the immediate subject market area, and not adjusting adequately for arterial street presence within the subject subdivision, is believed to have committed a substantial error that could have arguably resulted in a different reported opinion of market value; **2297**

52. Respondent failed to adjust Comparable Sale #3 for a swimming pool, suggesting to a reader/intended user that the pool contributes zero to value. This would obviously result in a different indication of market value from this comparable sale; **2298**

53. Respondent did not analyze another recent comparable sale, identical in size and backing to the same arterial roadway as the subject, that possibly would have provided a market value indication different from that reported in the appraisal report; **2298**

54. The subject property would have had a pending MLS classification at the time of appraisal. The Respondent did not state that the subject property was listed at the date of the appraisal. Additionally, the Respondent failed to analyze the current subject listing, nor did the Respondent analyze the contract sale price of the subject property, particularly in relation to the listing history of the subject property; **2298**

55. The report is misleading as a result of the fact that the Respondent, in the presentation of comparable sales data, failed to provide an analysis of one seemingly comparable sale that was identical in size and backed to the same arterial street as the subject, from within the immediate subject subdivision; **2298**

56. The report cannot be fully understood without consideration, discussion, and analysis of another recent comparable sale within the immediate subject subdivision that was the same size and backed to the same arterial street as the subject property. Including the additional comparable sale from the subject market area would arguably lead a reader to believe that the market value was something less than the figure reported in the report. Additionally, the report did not include factual and supportable information from the Marshall & Swift Residential Cost Handbook to permit a reader to understand the report; **2298**

57. Respondent is reasoned to have incorrectly computed the Replacement Cost New of the subject property garage, resulting in overstating the conclusion of market value from the Cost Approach. Respondent also failed to adjust Comparable Sales #1, #2, and inadequately adjusting Sale #3 for location backing to a golf course, as well as understating the adjustment for a pebble tec pool and beehive fireplace on Comparable

Sale #2. There is also reasoned to be a basis for making a site size adjustment to all of the comparable sales. The Respondent also incorrectly calculated the effective gross income and net operating income of the subject property; **2299**

58. Based on a consideration of the information available, it would seem reasonable to believe that the Respondent, by not analyzing other comparable sales data from the immediate subject subdivision may have communicated an appraisal report that was misleading; **2299**

59. Respondent also provided a location map that did not correctly show the location of the comparable sales and rentals. The location map also only included the addresses of the comparable rentals. Additionally, Comparable Sale #1 appears to back up to an open area, however, this was not apparently considered in the appraisal. Comparable #3 is believed to have a three stall garage that was not considered in the comparison analysis. Comparable #3 also has 2.5 baths, however, the comparison analysis is completed showing that is has only two baths; **2300**

60. Respondent did not analyze recent model match comparable sales data, giving adequate consideration to the necessary influence of an arterial roadway from within the subject subdivision that possibly would have provided a market value indication different from that reported in the report; **2301.**

61. Based on a consideration of the information available, it would seem reasonable to believe that the Respondent, by not analyzing other recent comparable sales data from the immediate subject subdivision phase and analyzing the subject listing history in the time leading up to the contract, may have communicated an appraisal report

that was misleading. Respondent failed to comment on and analyze the previous sale of the subject that occurred February 2, 2005 for $202,768. This sale, in addition to the previously cited sale of the subject occurred within the three years prior to the effective date of the appraisal; **2300**

CONCLUSIONS OF LAW

1. Pursuant to A.R.S. § 32-3635, a certified or licensed appraiser in the State or 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.

Case Nos. 2280 through 2288

2. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.

Case No. 2289

3. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-1(c); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-

1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.

Case No. 2290

4. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.

Case No. 2291

5. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v), and Statement on Appraisal Standards No. 6.

Case Nos. 2292 through 2293

6. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.

Case No. 2294

7. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-1(c); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.

Case Nos. 2295 through 2300

8. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.

Case No. 2301

9. The conduct described above constitutes violations of the following provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-4(c)(i); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and Standards Ethics Rule – 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 renewed. Respondent's Certificate shall immediately be suspended for a period six (6) months retroactive to September 20, 2007, the date the Board voted to deny her application for renewal.**

2. The period of suspension shall be followed by a three (3) year period of probation. During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.

3. Respondent shall successfully complete the following education within **sixty (60) days** of the effective date of this Consent Agreement: **Fifteen (15) hours of qualifying USPAP (with examination).** In addition, Respondent shall complete a **minimum of six (6) hours of education in the area of mortgage fraud**. The education required under this paragraph **may not** be counted toward the continuing education requirements for the renewal of Respondent's certificate. The same class may not be repeated to fulfill the education requirements of this Consent Agreement. However, any qualifying education (with an exam) completed by Respondent after January 1, 2008 may be considered in satisfying this requirement. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required course(s), except for that education that meets these requirements but was completed by Respondent after January 1, 2008 and before the effective date of this Consent Agreement.

4. 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.

5. During the period of probation, Respondent shall complete a minimum of **twenty-four (24) appraisal reports** under the supervision of an Arizona Certified Residential or Certified General Appraiser who shall serve as Respondent's mentor ("Mentor"). The Mentor shall be either an Arizona Certified Residential or General Appraiser.

6. **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 be signed by the Mentor as a supervisory appraiser. After one (1) year, the requirement of pre-approval of appraisals by a mentor may be terminated upon approval by the Board if Respondent has complied with the conditions set out in paragraph five (5) of this Order.

7. 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 or 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.

8. 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.

9. Respondent shall bear all costs and expenses associated with the mentorship and incurred in attended the courses.

10. 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.** <u>It is the Respondent's responsibility to ensure that the Mentor submits his/her reports monthly</u>. 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.

11. The Respondent shall file an appraisal log with the Board on a monthly basis listing every Arizona appraisal that she 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 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, she must still**

file an appraisal log with the Board showing that no appraisals were performed. The monthly log report may be field by mail or facsimile.

12. 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.

13. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 14, <u>and</u> (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.

14. At the end of three (3) years from the effective date of this Consent Agreement, the Respondent must petition the Board for termination of her 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.

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

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

17. If, between the effective date of this Consent Agreement and the termination of Respondent's probation by the Board, Respondent fails to renew her license 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.

18. 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.

19. Respondent understands that she has a right to a public administrative hearing concerning each and every allegation set forth in the above-captioned matter, at which administrative hearing she 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.

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

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

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

23. 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.

24. 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.

25. 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.

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

27. Pursuant to the Board's Substantive Policy Statement #1, the Board considers the violations in the above-mentioned cases amount to a **Level V Violation**.

DATED this ~~15th~~ 21st day of February, 2008.

Kymberly R. Gaudette, Respondent

Deborah G. Pearson, Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed
this 19th day of February, 2008 with:

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

COPY of the foregoing ~~e-mailed an~~d mailed regular mail and certified mail # 7008 0100 0003 8052 4397
this 22nd day of February, 2008 to:

Andrew D. Lynch
The Lynch Law Firm, L.L.C.
6040 North 7th Street, Suite 108
Phoenix, AZ 85014
Andrew@lynchlegalfirm.com
Attorney for Respondent

COPY of the foregoing sent or delivered
this 22nd day of February, 2008 to:

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

By: Deborah H. Pearson

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