

1 **BEFORE THE ARIZONA STATE BOARD OF APPRAISAL**

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3
4 In the Matter of:

5 **KYM R. GAUDETTE**
6 Certified Residential Appraiser
7 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

8 In the interest of a prompt and judicious settlement of the above-captioned matter
9 before the Arizona Board of Appraisal ("Board") and consistent with public interest,
10 statutory requirements and responsibilities of the Board, and pursuant to A.R.S. § 32-3601
11 *et seq.* and A.R.S. §41-1092.07(F)(5), Kym R. Gaudette, ("Respondent"), holder of
12 certificate no. 20522 and the Board enter into this Consent Agreement, Findings of Fact,
13 Conclusions of Law and Order ("Consent Agreement") as the final disposition of this
14 matter.

15 On September 20, 2007, the Board discussed Case Nos. 2280, 2281, 2282, 2283,
16 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298,
17 2299, 2300, and 2301 regarding Respondent. After reviewing the investigator's reports, as
18 well as the information presented, the Board voted to deny Respondent's application for
19 renewal of her certification as a residential appraiser.

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

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- 1 b. 2281 573 W. Enchanted Desert Drive Casa Grande, AZ (2/1/06)
2 c. 2282 2846 W. Sunshine Butte Drive, Queen Creek, AZ (2/7/06)
3 d. 2283 1654 E. Dust Devil Dr., Queen Creek, AZ (1/31/06)
4 e. 2284 616 W. Lucky Penny Place, Casa Grande, AZ (2/9/06)
5 f. 2285 597 W. Jardin Loop, Casa Grande, AZ (2/1/06)
6 g. 2286 10611 W. Zak Road, Tolleson, AZ (2/9/06)
7 h. 2287 1856 E. Cowboy Cove Trail, Queen Creek, AZ (1/31/06)
8 i. 2288 29872 N. Yellow Bee Dr., Queen Creek, AZ (2/17/06)
9 j. 2289 40042 N. Zampino St., Queen Creek, AZ (1/31/06)
10 k. 2290 35454 N. Barzona Trail, Queen Creek, AZ (2/25/06)
11 l. 2291 30051 N. Royal Oak Way, Queen Creek, AZ (2/17/06)
12 m. 2292 2423 S. Devonna Lane, Tolleson, AZ (2/15/06)
13 n. 2293 42358 W. Hillman Dr., Maricopa, AZ (2/16/06)
14 o. 2294 2846 W. Sunshine Butte Dr., Queen Creek, AZ (2/7/06)
15 p. 2295 655 W. Viola St., Casa Grande, AZ (2/16/06)
16 q. 2296 6016 S. 22nd Dr., Phoenix, AZ (2/22/06)
17 r. 2297 8716 S. 50th Lane, Laveen, AZ (2/16/06)
18 s. 2298 2582 N. Milly Place, Casa Grande, AZ (2/17/06)
19 t. 2299 784 E. Horizon Heights Dr., Queen Creek, AZ (3/22/06)
20 u. 2300 1522 E. Bowman Dr., Casa Grande, AZ (3/11/06)
21 v. 2301 22762 W. Cocopah, Buckeye, AZ (3/16/06)
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1 2. All of the above-referenced complaints were received by the Board on or
2 about November 20, 2006 and alleged that Respondent violated Arizona appraisal
3 statutes and that Respondent defrauded the complainant by artificially inflating the
4 reports as part of a fraudulent scheme, thereby causing complainant significant and
5 substantial damages as a result.
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7 3. The Board's investigation reveals a number of the same deficiencies in each
8 of the reports prepared by Respondent. The following are the deficiencies noted by the
9 Board and the corresponding cases in which they occurred.
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11 4. Respondent, by not considering other available model match comparable
12 sales from within the immediate subject market area, is believed to have committed a
13 substantial error that could have arguably resulted in a different reported opinion of
14 market value; **2280, 2286, 2292, and 2296**

15 5. The report does not include an opinion or estimate of reasonable exposure
16 time; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292,**
17 **2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300 and 2301.**
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19 6. The subject property was listed for numerous prices preceding the signing
20 of the contract and would have had a pending MLS classification at the time of appraisal.
21 The Respondent did not state that the subject property was listed at the date of the
22 appraisal. Additionally, the Respondent failed to analyze the current subject listing,
23 particularly in light of the prior listing history of the subject property during the previous
24 two months. Finally, the Respondent did not analyze the contract sale price of the subject
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1 property, particularly in relation to the listing history of the subject property; **2280, 2281,**
2 **2284, 2285, 2286, 2292, 2295, 2297, 2300 and 2301.**

3 7. Respondent states that the subject property had previously sold, however,
4 stating the previous sale price of the subject property falls considerably short of analyzing
5 the previous sale of the subject property, particularly in light of subsequent listing history
6 of the subject property leading up to the purchase contract and the fact that there were
7 other comparable sales, some model match comparable sales in the immediate subject
8 market area that, combined with the prior sale of the subject property, would arguably
9 indicate a market value different from that provided in the report; **2280, 2281, 2285,**
10 **2286, 2292, 2293, 2297 and 2301.**

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

17 9. The Respondent included data in support of her conclusion of market value,
18 however, she did not include data, discussion, and analyses of other relevant comparable
19 market data that other people would consider relevant in the appraisal of the subject
20 property; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2292,**
21 **2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300 and 2301.**

1 10. Based on a consideration of the information available, it would seem
2 reasonable to believe that the Respondent, by not analyzing model match comparable
3 sales data from the immediate subject subdivision phase and analyzing the subject listing
4 history in the time leading up to the contract, may have communicated an appraisal report
5 that was misleading; **2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290,**
6 **2292, 2293, 2296, and 2297.**

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

15 12. The report cannot be fully understood without consideration, discussion,
16 and analysis of other recent comparable sales, some or all of which appear to be model
17 matches, within the immediate subject subdivision. Including the additional comparable
18 sales data from the subject market area would arguably lead a reader to believe that the
19 market value was something less than the figure reported in the report. Additionally, the
20 report did not include factual and supportable information from the Marshall & Swift
21 Residential Cost Handbook to permit a reader to understand the report; **2280, 2282, 2283,**
22 **2284, 2285, 2287, 2288, 2293, 2295, 2299, 2300 and 2301.**

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

1 matched, is believed to have committed a substantial error that could have arguably
2 resulted in a different reported opinion of market value; **2281, 2282, 2283, 2284, 2285,**
3 **2295, 2298, 2300 and 2301.**

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5 14. Respondent is reasoned to have incorrectly computed the Replacement Cost
6 New of the subject property, or the subject garage (**2296**) resulting in overstating the
7 conclusion of market value from the Cost Approach; **2280, 2281, 2282, 2283, 2284,**
8 **2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298,**
9 **2300 and 2301.**

10
11 15. Respondent provided an incorrect address and APN for Comparable Sale
12 #1. Respondent also failed to adjust Comparable Sale #3 for having a swimming pool.
13 This would obviously result in a different indication of market value from this
14 comparable sale. Additionally, Respondent understated the pool adjustment for
15 Comparable Sale #2. A paired sales analysis of Items #1 and #2 might suggest a greater
16 adjustment is necessary for the swimming pool in Sale #2. The site size adjustment is
17 considered low on Comparable #2 in light of the appraised value of the subject lot. Also,
18 all three comparable sales used in the report are reasoned to have superior appeal due to
19 site location; **2282**

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

1 not considered reasonable and supportable; **2280, 2281, 2282, 2283, 2284, 2285, 2286,**
2 **2287, 2292, 2293, 2294, 2295, 2297, 2298, 2300 and 2301.**

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4 17. The subject property would have had a pending MLS classification at the
5 time of appraisal. The Respondent did not state that the subject property was listed at the
6 date of the appraisal. Additionally, the Respondent failed to analyze the current subject
7 listing, particularly in light of the prior listing history of the subject property during the
8 previous two months. Finally, the Respondent did not analyze the contract sale price of
9 the subject property, particularly in relation to the listing history of the subject property;
10 **2282, 2288, 2289, 2290, 2291, 2293, 2294, and 2299.**

11
12 18. Respondent states that the subject property had previously sold, however,
13 simply stating the previous sale is not the same as analyzing the sale. This is particularly
14 important in light of the fact that there was at least one additional recent comparable sale
15 that, combined with the prior sale of the subject property, would arguably indicate a
16 market value different from that provided in the report; **2282, 2283, 2287, 2288, 2290,**
17 **2298, and 2299.**

18
19 19. The report is misleading as a result of the fact the Respondent, in the
20 presentation of comparable sales data, failed to provide an analysis of additional
21 comparable sales from within the immediate subject subdivision or in close proximity
22 thereto, that would arguably suggest a different market value; **2282, 2283, 2287, 2288,**
23 **2289, 2290, 2294, 2299, and 2300.**

24
25 20. Respondent is reasoned not to have adequately adjusted Comparable Sales
26 #1 and #3 for location on a golf course. It is also believed that Respondent understated

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

3 21. The Respondent, by using unsupported cost data in the completion of the
4 Cost Approach, concluded to a Cost Approach conclusion that peers would not consider
5 reasonable; **2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294,**
6 **2295, 2296, 2297, 2298, 2299, 2300, and 2301.**

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

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

21 24. The report cannot be fully understood without consideration and discussion
22 of other model match comparable sales within the immediate subject subdivision.
23 Including the additional model match comparable data from the subject market area
24 would arguably lead a reader to believe that the market value was something less than the
25 figure reported in the report. Additionally, the report did not include factual and
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1 supportable information from the Marshall & Swift Residential Cost Handbook to permit
2 a reader to understand the report; **2280, 2286, 2292, 2296, and 2297.**

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

7
8 26. Respondent is not reasoned to have adequately adjusted Comparable Sales
9 #1 and #3 for location on a golf course. It is also believed that Respondent understated
10 the pool adjustment for Comparable Sale #2. There is also a basis for making a site size
11 adjustment to Comparable Sale #2. Comparable Sale #4 could not have been a pending
12 sale at the date of the appraisal (January 31, 2006) since the transaction did not reach
13 pending status, according to the MLS, until February 8, 2006. The actual closing date
14 was April 18, 2006, not March 10, 2006, as is stated in the report; **2287**

15
16 27. The subject property would have had a pending MLS classification at the
17 time of appraisal. The Respondent did not state that the subject property was listed at the
18 date of the appraisal, however, the Respondent states on Page 2 of the report that the
19 subject property had been listed or sold in the past 36 months. Additionally, the
20 Respondent failed to analyze the current subject listing, particularly in light of the prior
21 listing history of the subject property during the previous months. Finally, the
22 Respondent did not analyze the contract sale price of the subject property, particularly in
23 relation to the listing history of the subject property; **2287**

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

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

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

22 31. The Respondent's Replacement Cost New figure per square foot (Average
23 Quality) for the subject improvements (i.e. a garage) is not supported by information
24 from Marshall & Swift Residential Cost Handbook, the appraisal industry standard for
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1 completing the Cost Approach on residential properties; **2288, 2289, 2290, 2291, 2296**
2 **and 2299.**

3 32. The report cannot be fully understood without consideration, discussion,
4 and analysis of other recent comparable sales (some believed to be model matches—
5 **2294**) from within the immediate subject subdivision, and proper reporting and adjusting
6 of the selected comparable sales used in the appraisal report. Including the additional
7 comparable sales from the subject market area would arguably lead a reader to believe
8 that the market value was something less than the figure reported in the report.
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10 Additionally, the report did not include factual and supportable information from the
11 Marshall & Swift Residential Cost Handbook to permit a reader to understand the report;
12 **2289, 2290 and 2294.**

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

19 34. Respondent states on Page 2 of the report that the subject property had
20 previously sold March 21, 2005, and September 6, 2005, however, simply making a
21 statement regarding the previous sale is not the same as analyzing the sale; **2291**
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1 35. The report did not include factual and supportable information from the
2 Marshall & Swift Residential Cost Handbook to permit a reader to understand the report;
3 **2291.**

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

9
10 37. The Respondent failed to adjust Comparable Sale #2 for having three baths
11 vs. 2.5 baths in the subject property, and Sale #3 for having a golf course view. This
12 would obviously result in a different indication of market value from this comparable
13 sale; **2293**

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15 38. The report is misleading as a result of the fact that the Respondent, in the
16 presentation of comparable sales data, failed to provide an analysis of three additional
17 seemingly model match comparable sales from within the immediate subject subdivision;
18 **2293**

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20 39. The Respondent provided an incorrect sale price for Comparable Sale #2,
21 utilized the incorrect sale price in arriving at an adjusted market value for the subject
22 property, as well as failed to correctly analyze this Comparable. The Respondent has
23 incorrectly plotted the location of the subject and comparable sales on the Location Map.
24 The Respondent also failed to adjust Comparable Sale #2 for having three a three stall
25 garage. This would obviously result in a different indication of market value from this
26

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

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

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

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

20
21 43. Respondent states on Page 2 of the report that the subject property had
22 previously sold September, 2005, however, she did not note and analyze the sale of the
23 subject property dated November 10, 2004 for \$184,147. This sale, in addition to the
24 previously cited sale of the subject occurred within the three years prior to the effective
25 date of the appraisal. Additionally, simply stating the previous sale price of the subject
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1 property is not the same as analyzing the sale. This is particularly important in view of
2 the subsequent listing history of the subject property leading up to the January 2006
3 purchase contract and the fact that there were other recent comparable sales in the
4 immediate subject market area that, combined with the prior sale of the subject property,
5 would arguably indicate a market value different from that provided in the report; **2295**

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

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

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

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

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

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

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

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

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

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

23 53. Respondent did not analyze another recent comparable sale, identical in
24 size and backing to the same arterial roadway as the subject, that possibly would have
25 provided a market value indication different from that reported in the appraisal report;
26 **2298**

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

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

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

21 57. Respondent is reasoned to have incorrectly computed the Replacement Cost
22 New of the subject property garage, resulting in overstating the conclusion of market
23 value from the Cost Approach. Respondent also failed to adjust Comparable Sales #1,
24 #2, and inadequately adjusting Sale #3 for location backing to a golf course, as well as
25 understating the adjustment for a pebble tec pool and beehive fireplace on Comparable
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1 Sale #2. There is also reasoned to be a basis for making a site size adjustment to all of
2 the comparable sales. The Respondent also incorrectly calculated the effective gross
3 income and net operating income of the subject property; **2299**

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

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

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

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

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

6 CONCLUSIONS OF LAW

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

12 Case Nos. 2280 through 2288

13 2. The conduct described above constitutes violations of the following
14 provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-
15 2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-
16 5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards
17 Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and
18 Standards Ethics Rule – Conduct.

20 Case No. 2289

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

3
4 **Case No. 2290**

5 4. The conduct described above constitutes violations of the following
6 provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-
7 2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-
8 5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards
9 Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and
10 Standards Ethics Rule – Conduct.

11
12 **Case No. 2291**

13 5. The conduct described above constitutes violations of the following
14 provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-
15 2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(b)(ii); Standards Rule 1-5(a); Standards Rule 1-
16 5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards Rule 2-2(b)(v), and
17 Statement on Appraisal Standards No. 6.

18
19 **Case Nos. 2292 through 2293**

20 6. The conduct described above constitutes violations of the following
21 provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-
22 2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-
23 5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards
24 Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and
25 Standards Ethics Rule – Conduct.
26

1 Case No. 2294

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

9 Case Nos. 2295 through 2300

10 8. The conduct described above constitutes violations of the following
11 provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-
12 2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-
13 5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards Rule 2-1(b); Standards
14 Rule 2-2(b)(v); Statement on Appraisal Standards No. 6; Standards Rule 2-2(b)(viii); and
15 Standards Ethics Rule – Conduct.
16

17 Case No. 2301

18 9. The conduct described above constitutes violations of the following
19 provisions of the USPAP, 2005 edition: Standards Rule 1-1(b); Standards Rule 1-
20 2(c)(i)(ii)(iii)(iv); Standards Rule 1-4(a); Standards Rule 1-4(b)(ii); Standards Rule 1-
21 4(c)(i); Standards Rule 1-5(a); Standards Rule 1-5(b); Standards Rule 2-1(a); Standards
22 Rule 2-1(b); Standards Rule 2-2(b)(v); Statement on Appraisal Standards No. 6;
23 Standards Rule 2-2(b)(viii); and Standards Ethics Rule – Conduct.
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1 **ORDER**

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

4 1. **Upon the effective date of this Consent Agreement, Respondent's**
5 **Certificate as a Certified Residential Appraiser shall be renewed. Respondent's**
6 **Certificate shall immediately be suspended for a period six (6) months**
7 **retroactive to September 20, 2007, the date the Board voted to deny her**
8 **application for renewal.**

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

12 3. Respondent shall successfully complete the following education within
13 **sixty (60) days** of the effective date of this Consent Agreement: **Fifteen (15) hours**
14 **of qualifying USPAP (with examination).** In addition, Respondent shall complete a
15 **minimum of six (6) hours of education in the area of mortgage fraud.** The
16 education required under this paragraph **may not** be counted toward the continuing
17 education requirements for the renewal of Respondent's certificate. The same class
18 may not be repeated to fulfill the education requirements of this Consent Agreement.
19 However, any qualifying education (with an exam) completed by Respondent after
20 January 1, 2008 may be considered in satisfying this requirement. Proof of
21 completion of the required education must be submitted to the Board within 3 weeks
22 of completion of the required course(s), except for that education that meets these
23 requirements but was completed by Respondent after January 1, 2008 and before the
24 effective date of this Consent Agreement.
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1 4. During the term of probation, Respondent shall: (a) demonstrate
2 resolution of the problems that resulted in this disciplinary action; and (b) otherwise
3 comply with the terms of this Consent Agreement.

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

9 6. **During the probationary period, the Respondent shall not issue a**
10 **verbal or written appraisal, appraisal review, or consulting assignment without**
11 **prior review and approval by a Mentor.** Each report shall be signed by the Mentor
12 as a supervisory appraiser. After one (1) year, the requirement of pre-approval of
13 appraisals by a mentor may be terminated upon approval by the Board if Respondent
14 has complied with the conditions set out in paragraph five (5) of this Order.

15 7. The Mentor must be approved by the Board and is subject to removal by
16 the Board for nonperformance of the terms of this Consent Agreement. The Mentor
17 may not have a business relationship with Respondent or be related to respondent.
18 Any replacement Mentor is subject to the Board's approval and the remaining terms
19 of this Consent Agreement. The Board's Executive Director may give temporary
20 approval of the Mentor until the next regular meeting of the Board.

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

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

5 10. The Mentor shall submit monthly reports to the Board for each calendar
6 month during Respondent's probationary period reflecting the quantity and quality of
7 Respondent's work, including, but not limited to, improvement in Respondent's
8 practice and resolution of those problems that prompted this action. The Mentor's
9 report shall be filed monthly beginning the 15th day of the first month following the
10 start of Respondent's probationary period and continuing each month thereafter until
11 termination of the probationary period by the Board. **Even if the Mentor reviews no**
12 **appraisals during a given month, a report stating that no appraisals were**
13 **reviewed or approved must be submitted.** It is the Respondent's responsibility to
14 ensure that the Mentor submits his/her reports monthly. If the monthly reporting date
15 falls on a Saturday, Sunday, or holiday, the report is due on the next business day.
16 The monthly report may be filed by mail or facsimile.

17 11. The Respondent shall file an appraisal log with the Board on a monthly
18 basis listing every Arizona appraisal that she has completed within the prior calendar
19 month by property address, appraisal type, valuation date, the Mentor's review date,
20 the date the appraisal was issued, and the number of hours worked on each
21 assignment. The report log shall be filed monthly beginning the 15th day of the first
22 month following the start of Respondent's probationary period and continuing each
23 month thereafter until the Board terminates the probation. If the log reporting date
24 falls on a Saturday, Sunday, or holiday, the report log is due on the next business day.
25 **Even if Respondent performs no appraisals within a given month, she must still**
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1 **file an appraisal log with the Board showing that no appraisals were performed.**

2 The monthly log report may be field by mail or facsimile.

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

9 13. Respondent's probation, including mentorship, shall continue until: (a)
10 Respondent petitions the Board for termination as provided in paragraph 14, and (b)
11 the Board terminates the probation and mentorship. Upon petition by the Respondent
12 for termination of the probation and mentorship, the Board will select and audit 3 of
13 Respondent's appraisal reports.

14 14. At the end of three (3) years from the effective date of this Consent
15 Agreement, the Respondent must petition the Board for termination of her mentorship
16 and probation. If the Board determines that Respondent has not complied with **all** the
17 requirements of this Consent Agreement, the Board, at its sole discretion, may either:
18 (a) continue the probation, including mentorship; or (b) institute proceedings for
19 noncompliance with this Consent Agreement, which may result in suspension,
20 revocation, or other disciplinary and/or remedial action.

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

24 16. Respondent shall comply with the Uniform Standards of Professional
25 Appraisal Practice in performing all appraisals and all Board statutes and rules.
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1 17. If, between the effective date of this Consent Agreement and the
2 termination of Respondent's probation by the Board, Respondent fails to renew her
3 license while under this Consent Agreement and subsequently applies for a license or
4 certificate, the remaining terms of this Consent Agreement, including probation and
5 mentorship, shall be imposed if the application for license or certificate is granted.

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

11 19. Respondent understands that she has a right to a public administrative
12 hearing concerning each and every allegation set forth in the above-captioned matter,
13 at which administrative hearing she could present evidence and cross-examine
14 witnesses. By entering into this Consent Agreement, Respondent freely and
15 voluntarily relinquishes all rights to such an administrative hearing, as well as all
16 rights of rehearing, review, reconsideration, appeal, judicial review or any other
17 administrative and/or judicial action, concerning the matters set forth herein.

18 Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

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

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

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

24 23. If Respondent fails to comply with the terms of this Consent Agreement,
25 the Board shall properly institute proceedings for noncompliance with this Consent
26 Agreement, which may result in suspension, revocation, or other disciplinary and/or

1 remedial actions. Respondent agrees that any violation of this Consent Agreement is a
2 violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any
3 of the provisions of the Board's statutes or the rules of the Board for the
4 administration and enforcement of its statutes.

5 24. Respondent understands that this Consent Agreement does not constitute
6 a dismissal or resolution of other matters currently pending before the Board, if any,
7 and does not constitute any waiver, express or implied, of the Board's statutory
8 authority or jurisdiction regard any other pending or future investigation, action or
9 proceeding. Respondent also understands that acceptance of this Consent Agreement
10 does not preclude any other agency, subdivision or officer of this state from instituting
11 other civil or criminal proceedings with respect to the conduct that is the subject of
12 this Consent Agreement.

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

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

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

21 DATED this ^{15th}~~15th~~ day of February, 2008.
22 _{21st}

23
24 
25 Kimberly R. Gaudette, Respondent

26 
Deborah G. Pearson, Executive Director
Arizona Board of Appraisal

1 ORIGINAL of the foregoing filed
this 14th day of February, 2008 with:

2 Arizona Board of Appraisal
3 1400 West Washington Street, Suite 360
4 Phoenix, Arizona 85007

5 COPY of the foregoing ~~e-mailed~~ and mailed regular mail *and certified mail #*
this 13th day of February, 2008 to: *7000 GND COOK SE 52 4377*

6 Andrew D. Lynch
7 The Lynch Law Firm, L.L.C.
8 6040 North 7th Street, Suite 108
9 Phoenix, AZ 85014
10 Andrew@lynchlegalfirm.com
11 Attorney for Respondent

12 COPY of the foregoing sent or delivered
13 this 12th day of February, 2008 to:

14 Jeanne M. Galvin
15 Assistant Attorney General
16 Arizona Attorney General's Office
17 1275 West Washington, CIV/LES
18 Phoenix, Arizona 85007

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By: *Richard A. Pearson*

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