BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF:	CASE NOS. 3544 and 3582
JAMES GRAHAM Certified Residential Appraiser Certificate No. 21460	**CONSENT AGREEMENT AND ORDER FOR THIRTY DAY SUSPENSION OF CERTIFICATE and PROBTAION**

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), James Graham, ("Respondent"), holder of certificate no. 21460 and the Board enter into this Consent Agreement, Findings of Fact, Conclusions of Law and Order ("Consent Agreement") as the final disposition of these matters.

On September 20, 2013, the Board held an Informal Hearing on case no. 3544 and added further discussion regarding case no. 3582. Respondent was properly noticed and appeared personally and on his behalf. At the conclusion of its consideration of the matters, the Board voted to offer Respondent this Consent Agreement and Order in lieu of further administrative proceedings.

JURISDICTION

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

2. Respondent holds a certificate as a Certified Residential Appraiser in the State of Arizona, Certificate No. 21460, issued on November 14, 2006, pursuant to A.R.S. § 32-3612.

CONSENT AGREEMENT

Respondent understands and agrees that:

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

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

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

4. Respondent irrevocably waives any right to rehearing or review or to any judicial review or any other appeal of these matters.

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 In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the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

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

FINDINGS OF FACT

On or about September 20, 2013, the Board's investigation into this matter revealed the following facts:

3544

1. This matter deals with an appraisal conducted and report written by Respondent of a multi-family property located at 38 S. Pine Circle, Flagstaff, AZ 86001 with an effective date of value of October 16, 2012.

2. The subject is a multi-family property that is comprised of a single family residence and a duplex on one parcel. The Respondent completed all three approaches to value.

3. With respect to the Income Approach, the Respondent uses three rental properties to estimate market rent. The subject's 4 bedroom units are larger than all of the rentals and are offered to the market furnished. The rents indicated by the rental comparables range from $700 to $1,300 per month or $.72 -$.94/SF/Month. Market rents for the subject units are estimated to be $934/month or $.58-$.76/SF/Month. Although Respondent states that most emphasis is placed upon Rental Comparable No. 1 ($.94/SF, top; of the range) the estimate of rents is concluded at the bottom of the range.

4. Further, the rental comparables used in the income approach are the same properties used in the sales comparison approach. Utilizing the same properties for both

rental and sales comparables is not accepted appraisal methodology. Rental rates reported in the MLS sales are based upon rents as of the listing date, and may not reflect current market rents. The rental rates presented in the appraisal are not reflected in the MLS data sheets located in the workfile.

5. The Gross Rent Multipliers (GRMs) reflected by the sales comparables range from 103.12 to 197.32, yet the Respondent concludes to a GRM of 59.2 in the income approach. There is no explanation how the Respondent concluded to a GRM significantly below the reported range. Although the Respondent states that actual rents ($6,000) are above market and estimates of market rents at $2,802/month, the GRM is applied to a rental estimate of $6,000. In his Response, the Respondent notes that the GRM was reconciled by consideration of the rental GRMs, the indicated value by the cost approach and with the most weight placed on the value indicated by the sales comparison approach. It appears that the Respondent merely divided the value indication provided by the sales comparison approach by the estimate of market rent and used that figure as the GRM. This is not recognized appraisal methodology and does not provide a separate value estimate via the income approach.

6. With respect to the sales comparison approach, the Respondent uses three closed sales and two active listings of multi-family properties in the area. Adjustments are applied for differences in GLA, bedroom and bathroom counts. Four of the five comparables are 33-53 years old, yet no discussion or adjustment is applied for the subject' significantly younger construction of 4 years.

7. Respondent reported that the cost figures are provided by Marshall & Swift Valuation Services. The subject site is 11,530 SF and there is no covered parking and site improvements are described as cyclone fencing, yet the "as is" value of the site improvements is estimated at $50,000. This figure appears excessive and is not supported by any information in the appraisal. The conclusion of market value via the cost approach is $653,843, while the value conclusion via the sales and income approaches is $355,000. The reconciliation states that the cost and income approaches were completed as required in the scope of work and deemed necessary to produce a credible report. Yet, there is no analysis or discussion as to the dramatic difference in value conclusions.

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On or about September 20, 2013, the Board's investigation into this matter revealed the following facts:

8. This matter deals with an appraisal conducted and report written by Respondent of a single-family residence located at 4409 E. Spanish Moss Lane, Flagstaff, AZ with an effective date of value of December 26, 2012.

9. The subject is a very large, 3-story custom home on a 16,260 square foot lot. The Respondent concludes that the 5,744 SF home is an over-improvement for the area and that the market does not value any livable area over 4,500 SF. As a result, GLA adjustments are based solely on the difference between the comparable sales GLA and 4,500 SF. Although the subject may be an over-improvement for the immediate area, there are many properties of similar size in the Flagstaff market. A search of public records indicates that there is a market for large homes in Flagstaff. The Respondent's

analysis to give no value to the additional square footage is not supported and does not reflect recognized appraisal methodology.

10. While the Respondent gave no value to nearly 1,300 SF of livable area in the sales approach due to its over-improvement, he values the entire 5,744 SF in the cost approach and does not address functional obsolescence. If the subject is an over-improvement that would not recover its cost in a market transaction, functional obsolescence is indicated and should have been analyzed.

11. Moreover, the subject's lower level is a walk-out basement (daylight) that is below grade but is not reported as such by the Respondent.

12. In addition, the subject has a 42-panel, grid-tied solar photovoltaic powered system with two inverters that generates 6500 watts per hour. Energy efficient items reported included: high density foam under slab insulation, dual pane low e windows and upgraded ceiling and wall insulation. The Respondent reports solar electric in the sales grid but gives no discussion or value to these features.

13. Comparable no. 6 is reported to be 3,750 SF. The Respondent states that public records are typically more reliable when there is a variance with MLS information and that he relies upon public records. However, MLS reported that this property had been recently completely remodeled and expanded. The agent/owner reports that the remodel added over 1,000 SF of livable area.

14. The Respondent inaccurately reported the garage as having 3 stalls rather than 4.

CONCLUSIONS OF LAW

3544

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

2. The conduct described above constitutes violations of the following provisions of the USPAP, 2012-2013 edition: Standards Rule 1-1(a); Standards Rule 1-4(a),(b)(iii) and (c)(i)(iii); Standards Rule 1-6(a) and (b); Standards Rule 2-1(a) and (b); Standards Rule 2-2(viii); and Standards Ethics Rule—Competency.

3582

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

4. The conduct described above constitutes violations of the following provisions of the USPAP, 2012-2013 edition: Standards Rule 1-1(a), (b) and (c); Standards Rule 1-4(a),(b)(i)(ii) and (iii); Standards Rule 2-2(viii); and Standards Ethics Rule—Competency.

ORDER

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

1. **Beginning October 7, 2013, Respondent's Certificate as a Certified Residential Appraiser shall be suspended for a period of thirty (30) days, up to, including and through November 5, 2013.** During the period of suspension, Respondent shall not issue a verbal or written appraisal, appraisal review or consulting assignment involving real property in the State of Arizona.

2. **Within twelve (12) months of the date the Executive Directors signs this Consent Agreement,** Respondent shall successfully complete the following education: a **thirty (30) hour qualifying education course in Basic Appraisal; a seven (7) hour course is Small Income Residential Properties; and a fifteen (15) hour USPAP course (with an exam).** 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. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required courses. **Respondent is responsible for all costs associated with completing this education.** Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required coursework.

3. **The suspension of Respondent's certificate shall be lifted on November 6, 2013. At the conclusion of the suspension of Respondent's certificate,** his certificate shall be immediately **placed on probation for a minimum period of twelve (12) months.** During the term of probation, Respondent shall: (a) demonstrate resolution

of the problems that resulted in this disciplinary action; (b) otherwise comply with the terms of this Consent Agreement and (c) comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.

4. 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"). **At least 4 of these reports must be small income producing residential properties. The reports may be demonstration reports.**

5. 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. Any changes the Mentor requires to ensure the report complies with the USPAP shall be completed by the Respondent and approved by the Mentor before the report is issued. **In addition, the Mentor must personally inspect with the Respondent each property that is to be appraised.**

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

7. Not more than **30 days** after the Executive Director signs 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.

8. Respondent shall bear all costs and expenses associated with the mentorship and incurred by attending the course(s).

9. 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 1st 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 does not co-sign any of Respondent's appraisals during a given month, a report stating that no appraisals were reviewed or approved must be submitted.** It is the Respondent's responsibility to ensure that the Mentor submits his/her reports monthly. If the monthly reporting date falls on a Saturday, Sunday, or holiday, the report is due on the next business day. The monthly report may be filed by mail, facsimile or email.

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

showing that no appraisals were performed. The monthly log report may be filed by mail, facsimile or email.

11. 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.

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

13. **Prior to the termination of Respondent's probation, including mentorship, Respondent must take and pass the National Uniform Licensing and Certification Examination and further, Respondent must demonstrate his competency in appraising small income producing residential properties.**

14. At the end of **twelve (12) months** from the start of the probationary period, the Respondent may petition the Board for termination of his mentorship and probation. If the Board determines that Respondent has not complied with **all** the requirements of this Consent Agreement, the Board, at its sole discretion, may either: (a) continue the probation, including mentorship; or (b) institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial action.

15. Respondent shall not act as a supervising appraiser for other appraisers or trainees, nor shall he act as a mentor, during the term of the probation. Respondent shall

also not teach any course related to real estate appraisals during the term of the suspension or 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 his certificate while under this Consent Agreement and subsequently applies for a license or certificate, the remaining terms of this Consent Agreement, including probation and mentorship, shall be imposed if the application for license or certificate is granted.

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

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

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-referenced matter to constitute to a **Level IV Violation**.

DATED this 9th day of October, 2013.

James Graham
Respondent

Debra Rudd, Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed this 9th day of October, 2013 with:

Arizona Board of Appraisal
15 S. 15th Ave.; Ste. 103A
Phoenix, Arizona 85007

COPY of the foregoing mailed regular and certified mail #7009 1680 0000 7387 9074 this 9th day of October, 2013 to:

James Graham
3708 S. Cochise Drive
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COPY of the foregoing mailed interagency mail this 9th day of October, 2013 to:

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