BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

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ARIZONA BOARD OF APPRAISAL

IN THE MATTER OF: **FLO C. LEHNUS** Certified Residential Appraiser Certificate No. 20545	**CASE NOS. 2912 and 3136** **CONSENT AGREEMENT AND ORDER OF DISCIPLINE**

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), Flo C. Lehnus ("Respondent"), holder of Certificate No. 20545 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 January 27, 2012, the Board held an Informal Hearing in case nos. 2912 and 3136. Respondent appeared personally and on her own behalf. At the conclusion of the Informal Hearing the Board voted to offer the Respondent a Consent Agreement and Order of Discipline in lieu of further administrative proceedings.

JURISDICTION

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

2. Respondent holds a Certificate as a Certified Residential Appraiser in the State of Arizona, Certificate No. 20545 issued on July 1, 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 this matter.

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 In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the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

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

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FINDINGS OF FACT

2912

On or about June 8, 2011, the Board's investigation revealed the following:

1. This complaint involves an appraisal conducted and report written by Respondent of real property located at 3030 W. Calle Paulo, Tucson, AZ 85745 with an effective date of value of January 12, 2009.

2. In the Neighborhood Section of the appraisal report, Respondent characterized property values as "stable" with no supporting evidence or explanation in the report or the workfile. Numerous readily available data sources indicate the market was generally declining at the time. The lack of explanation or support for the reported "stable" property values in the face of widely available conflicting data resulted in a misleading description of the market conditions.

3. In the sales Comparison Approach, Respondent did use sales that were among the best available.

4. Comparable Sales 2, 4, and 5 had significantly superior features such as remodeled kitchens with upgraded countertops that were described n the Sales Comparison Approach as "similar" to the subject. The subject was 30 years old and had not been remodeled and with very limited updating. The features were not similar. No adjustments were made. The adjusted sale prices of these three sales were higher than they would have been if the features had been accurately presented. The effect of the superior features was not considered in the analysis of these comparable sales.

5. In addition, there were factual errors regarding price range and lot sizes in the Neighborhood description and an error in the reported living area for Sale 3 in the Sales Comparison Approach.

6. On February 20, 2009 Respondent's client requested the addition of interior photos to the report. That request was made more than a month after the signature date. Both copies of the report in the complaint file have signature dates of 1/15/09 which predates the client's request and both copies of the report contain interior photos. The report appears to have been modified after submission without changing the signature date or otherwise documenting the change in the report. There is no copy of a version without interior photos in the workfile.

3136

On or about October 2,1 2011, the Board's investigation revealed the following:

1. This complaint involves an appraisal conducted and report written by Respondent of a fourplex (2 -4 Family Residential Income) located at 2520-2526 E. Glenn Street, Tucson, AZ 85716 with an effective date of value of July 13, 2007.

2. The appraisal was for a cash-out refinance of a four unit residential income property in Central Tucson. The Appraisal request indicated a loan amount of $450,000 with an 85% loan to value ratio and an "estimated value" of $500,000. The existence of that statement is not by itself an unacceptable assignment condition. There was no evidence that the assignment was specifically contingent upon a predetermined value conclusion. However, Respondent allowed the stated loan information to influence the appraisal process even though there was no specific mandate to do so because Respondent's initial market research and comparable selection was based on a search of properties priced at $450,000 or higher. This price restriction excluded over half of the potentially relevant available sales, which introduced a strong directional bias in to the appraisal process.

3. All of the comparable sales used in the report were superior to the subject in several ways that were either not disclosed or not adequately addressed in the report. The subject's units were all 2 bedroom/1 bath units. The comparables' units were all 2

bedroom/2 bath units but no bath count adjustments were made and the differences were not discussed in the original report. The subject has attached units with shared walls while the comparables were all detached unit with no shared walls but Respondent did not disclose this fact in the report. Additionally, the subject had no covered parking and all of the comparables did but this fact was not disclosed in the report. The subject units had evaporative cooling and the comparable units had air conditioned (refrigerated) units. Respondent incorrectly stated that he comparables units had evaporative cooling. These errors and omissions led to an indicated value by the Sales Comparison Approach that was significantly higher than was actually warranted.

4. None of the sales used in the report was an independent sale of a single, four unit income property. All of the sales used were part of multi-parcel transactions, where the sales of the individual parcels recorded separately but the actual transactions involved multiple contiguous income properties purchased by the same buyer from the same seller on the same day. The Respondent failed to disclose in the report, the circumstances of these transactions and the impact on the value conclusion.

5. Sales of more similar properties were available but were not used in the report. Failure to include more similar sales resulted in an upward directional bias in the Sales Comparison analysis.

6. The rental analysis was flawed. All of the comparable rentals were larger, detached 2 bedroom/2 bath units that were superior to the subject's attached 2 bedroom/1 bath units. Units with two bathrooms rent higher than units with one bathroom I the subject's market segment. No adjustments were reported. The opinion of market rents was below the lowest rent of any of the compared unit, with no explanation of the reconciliation process.

7. There was no analysis of operating expense in the appraisal report or in the workfile.

8. The income Approach was based on a Gross Monthly Rent Multiplier that was not supported by the data. The Gross Monthly Rent Multiplier applied to the subject was significantly higher than the highest multiplier for the comparable sales. As a result, the indicted value by the Income Approach that was significantly higher than it should have been.

9. The dwelling cost data in the Cost Approach was not supported by the cited data source. The reported cost of improvements was approximately twice the cost actually indicated by the cited data source. As a result, the indicated value by the Cost Approach was significantly higher than it should have been.

10. Respondent's value conclusion of $500,000 was exactly the number the client needed to accomplish the loan condition stated on the appraisal request. Respondent allowed the loan information in the appraisal request to influence the appraisal process in a direction that facilitated her client's ability to make the requested loan. The appraisal was not performed in an impartial, independent manner. There was a strong directional bias throughout the appraisal.

11. There were several additional errors or omission and commission that affected the credibility of the report including that the site is undersized for the existing use. The current zoning allows two units on a lot the size of the subject but the subject has four units on the site; Respondent did not disclose the undersized parcel in the appraisal report. Additionally, the report indicates that property has a gravel driveway and off-street parking for eight cars. However, Respondent does not disclose that the driveway and parking are located on an adjacent parcel and are not located on the site itself. The subject has no driveway, no off-street parking and no street frontage. Moreover, Sale 2 and Rental 2 are the same property but Sale 2 was incorrectly reported as being 3500 square feet when it was factually 3807 square feet.

12. Overall, the appraisal report was misleading and the assignment results were significantly biased in an upward direction. Respondent did not perform the assignment with impartiality. Respondent allowed the appraisal process to be influenced by the loan information in the appraisal request. The assignment was not performed in an independent manner and the results were developed and communicated in a misleading manner.

CONCLUSIONS OF LAW

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

2912

The conduct described above constitutes violations of the following provisions of the USPAP, 2008-2009 edition:

Standards Rule 1-3(a); Standards Rule 1-4(a); and Standards Rule 2-1(a) and (b)

3136

The conduct described above constitutes violations of the following provisions of the USPAP, 2006 edition:

Standards Rule 1-1(a), (b) and (c); Standards Rule 1-2(e)(i); Standards Rule 1-4(a), (b)(ii) and (c)(i) and (ii); Standards Rule 2-1(a) and (b); Standard 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 placed on probation for a**

minimum period of six (6) months. During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules. The effective date of this Consent Agreement and Order is the date the Order is signed by the Executive Director on behalf of the Board.

2. 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.

3. Respondent shall complete the following education within six (6) months of the effective date of this Consent Agreement: **a seven (7) hour course in Basic Appraisal (to include market trends); a four (4) hour course in Cost Approach; a seven (7) hour course in Small Residential Income Producing Properties and the seven (7) hour 2012-2013 USPAP Update course.** The education required under this paragraph **may not be counted toward the continuing education requirements for the renewal of Respondent's certificate except that the seven (7) hour USPAP Update course may be counted for continuing education requirements.** The same class may not be repeated to fulfill the education requirements of this Consent Agreement.

4. Proof of completion of the required education must be submitted to the Board within 3 weeks of completion of the required coursework. Respondent shall be responsible for all costs associated with completing the coursework required in paragraph 3.

5. During the period of probation, Respondent shall complete a minimum of **twelve (12) appraisal reports**. 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 date the appraisal was issued, and the number of hours worked on each assignment. The 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, she must still file an appraisal log with the Board showing that no appraisals were performed.** The monthly log report may be filed by mail or facsimile.

6. 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.

7. Respondent's probation, including mentorship, shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 8 and (b) the Board terminates the probation. Upon petition by the Respondent for termination of the probation, the Board will select and audit 3 of Respondent's appraisal reports.

8. At the end of **six (6) months** from the effective date of this Consent Agreement, the Respondent may petition the Board for termination of her 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 or (b) institute proceedings for noncompliance with this Consent Agreement, which may result in suspension, revocation, or other disciplinary and/or remedial action.

9. 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.

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

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

12. 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.

13. 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.

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

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

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

17. 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.

18. 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.

19. 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.

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

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

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DATED this 21st day of March, 2012.

Flo C. Lehnus
Respondent

Dan Pietropaulo
Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed this 21 day of March, 2012 with:

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

COPY of the foregoing mailed regular and certified mail 7009 1680 0000 7387 1450 this 21 day of March, 2012 to:

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P.O. Box 36852
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COPY of the foregoing sent or delivered this 21 day of March, 2012 to:

Jeanne M. Galvin
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By: _____
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Rebecca M. Loar
Regulatory Compliance Officer