RECEIVED
2013 FEB -7 PM 2:14
ARIZONA BOARD OF APPRAISAL

BEFORE THE ARIZONA STATE BOARD OF APPRAISAL

IN THE MATTER OF: **KYLE D. LINDSEY** Certified Residential Appraiser Certificate No. 20907	**CASE NOS. 2984 and 3241** **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), Kyle D. Lindsey ("Respondent"), holder of Certificate No. 20907 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 November 27, 2012, the Board held in an Informal Hearing in Case Nos. 2984, 3113 and 3241. Respondent appeared personally. At the conclusion of its consideration of these cases, the Board voted to dismiss case number 3113 and to offer the Respondent a Consent Agreement and Order of Discipline in case numbers 2984 and 3241 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. 20907 issued on May 20, 1999, pursuant to A.R.S. § 32-3612.

CONSENT AGREEMENT

Respondent understands and agrees that:

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

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

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

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

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 In the event that the Board does not approve this Consent Agreement, it is withdrawn and shall be of no evidentiary value and shall not be relied upon nor introduced in any action by any party, except that the parties agree that should the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

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

FINDINGS OF FACT

On or about October 7, 2011, the Board's investigation revealed the following:

2984

1. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 8301 N. Merion Way, Paradise Valley, AZ 85253 with an effective date of value of May 16, 2006.

2. Respondent made a number of errors and omissions in the appraisal report, including but not limited to: failing to state the subject's contract date; incorrectly identifying the subject's neighborhood; failing to note the subject's location near a major arterial road; stating a significantly lower effective age of improvements, without commenting on any updating or modernization; using the sale of a property that was not for the purchase of the home but rather to sell for vacant land or to build something new; using a sale of a property that is not from a competing neighborhood; and failing to provide the correct sales price for comparable number 4.

3. Further, Respondent failed to report the subject's current listing dates; nor did Respondent analyze the subject's sales contract.

4. Additionally, the Respondent failed to reconcile the quantity and quality of data and provided no analysis for the Sales Comparison approach.

5. In the Cost Approach section, and in other sections of the appraisal report referencing the Cost Approach, the Respondent made conflicting statements of the process of determining the estimated site value and the physical depreciation.

6. In addition, the workfile did not contain supporting data for the following: the neighborhood data with respect to the price and age ranges of the single family properties or property values increasing; supporting the adjustments made in the Sales Comparison Approach for the comparable sales; supporting the Cost Approach; the neighborhood or market areas or of other sales that might have been used or considered

and no data sheets of public records information for the comparables used in the appraisal report.

7. Finally, the Board expressed concern that Respondent adjusted $3,000 for one garage stall but only $75 per square foot for the difference in GLA.

3241

On or about January 13, 2012, the Board's investigation revealed the following:

8. This matter deals with an appraisal conducted and report written by Respondent of a single family residence located at 13013 W. Columbine Dr., El Mirage AZ, 85335 with an effective date of value of November 7, 2007.

9. Respondent made several errors and omissions in the appraisal report, including but not limited to: providing the incorrect zoning classification; stating a significantly lower effective age of the improvements, without commenting on any updating or modernizations; use of outdated Cost data; stated two different ways within the appraisal report of how the Physical Depreciation was figured in the Cost Approach; and there were several misspelled words.

10. In addition, Respondent failed to recognize the declining property values for the defined neighborhood. The Board's investigation demonstrated that the value of single family residences declined 8% over a six month period (11/01/06 to 4/30/07); nor did Respondent apply the rate of decline to the three closed sales used in the report (i.e. there were no negative time adjustments).

11. The Respondent failed to reconcile the quantity and quality of data and provided no analysis for the Sales Comparison Approach.

12. In the Cost Approach section and in other sections of the appraisal report referencing the Cost Approach, the Respondent made conflicting statements of the process utilized in determining the estimated site value.

13. Finally, the Respondent's workfile does not contain data to support the opinions and conclusions indicated within the appraisal report.

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.

2984

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

Standards Rule 1-1(a) and (c); Standards Rule 1-5(a); Standards Rule 1-6(a); Standards Rule 2-1 (a) and (b); and Standard Ethics Rule—Recordkeeping.

3241

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

Standards Rule 1-1(a) and (c); Standards Rule 1-4(b)(i); Standards Rule 1-6(a); Standards Rule 2-1 (a) and (b); and Standard Ethics Rule—Recordkeeping.

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 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 fifteen (15) hour course in USPAP (with an exam); a seven (7) hour course in Complex Properties and a seven (7) hour Report Writing course.** 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. The Respondent is responsible for the costs of completing the required coursework.

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

5. **In addition, within fourteen (14) days of the effective date of this Consent Agreement and Order,** the Respondent shall submit to the Board his appraisal log for the last twelve (12) months. **Further**, in that log, Respondent shall identify which appraisals are appraisals of complex properties. Upon receipt of Respondent's log, the Board shall select three (3) of Respondent's appraisals for the purpose of audit. 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.

6. 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 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 regular mail, email or facsimile.

7. 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.

8. Respondent's probation shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 9 <u>and</u> (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.

9. The Respondent **may** petition the Board at the end of **three (3) months** from the effective date of this Consent Agreement for termination of his 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.

10. 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 probation.

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

12. 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, shall be imposed if the application for license or certificate is granted.

13. 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.

14. 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.

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

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

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

18. 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.

19. 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.

20. 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.

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

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

///

///

DATED this 8th day of February, 2013.

Kyle D. Lindsey
Respondent

Debra Rudd
Executive Director
Arizona Board of Appraisal

ORIGINAL of the foregoing filed
this 8th day of February, 2013 with:

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

COPY of the foregoing mailed regular
and certified mail _____
this 8th day of February, 2013 to:

Kyle D. Lindsey
22830 N. 32nd Ave.
Phoenix, AZ 85027

COPY of the foregoing sent or delivered
this 8th day of February, 2013 to:

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

By: Sherry Ponte
2961310