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BEFORE THE ARIZONA STATE BOARD OF APPRAISAL
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ARIZONA BOARD OF APPRAISAL

IN THE MATTER OF:

CASE No. 3417

JAY C. LUNDBERG
Certified Residential Appraiser
Certificate No. 21614

**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), Jay C. Lundberg ("Respondent"), holder of Certificate No. 21614 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 June 8, 2012, the Board met to discuss case no. 3417. Respondent appeared personally and on his own behalf. At the conclusion of the Board's consideration of the matter, 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. 21614 issued on October 9, 2007, 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.

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FINDINGS OF FACT

On or about June 8, 2012, the Board’s investigation revealed the following:

1. This matter concerns an appraisal report written by Respondent of an individual condominium unit located at 4001 E. Campbell Ave, #12, Phoenix, AZ 85018 with an effective date of value of February 25, 2012.

2. The interior and exterior inspections of this property were conducted by Mr. Aram Autry, certified residential appraiser #21182. While Respondent conducted an exterior inspection of the property, the inspection took place after the appraisal report was completed.

3. Not only did Respondent fail to note Mr. Autry’s significant contribution to the appraisal, the Respondent did sign the certification indicating he had inspected the property when, in fact, he had not.

4. In addition, there were special concessions noted in the sales contract for the subject that were not disclosed in the sales history. Moreover, the subject’s marketing/listing history was inadequately discussed.

5. Comparable sales nos. 2 and 4 were designed by architect Al Beadle but this fact was not disclosed or discussed and no adjustment was made.

6. The fact that comparable no. 4 sides to 32nd Street and is across from an office complex was not adequately discussed and no location adjustment was made.

7. Other comparables utilized in the appraisal report were active rentals but Respondent failed to complete the income approach in this instance.

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

1 Standards of Practice adopted by the Board are codified in the USPAP edition applicable
2 at the time of the appraisal.

3 The conduct described above constitutes violations of the following provisions of
4 the USPAP, 2012-2013 edition:

5 **Standards Rule 1-1(a); Standards Rule 1-4(a); Standards Rule 1-5(a);**
6 **Standards Rule 2-1(a); Standards Rule 2-2(b) and Standards Rule 2-3.**

7 **ORDER**

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

10 1. **Upon the effective date of this Consent Agreement, Respondent's**
11 **Certificate as a Certified Residential Appraiser shall be placed on probation for a**
12 **minimum period of six (6) months.** During probation, Respondent shall comply with
13 USPAP, Arizona Revised Statutes and Appraisal Board rules. The effective date of this
14 Consent Agreement and Order is the date the Order is signed by the Executive Director
15 on behalf of the Board.

16 2. During the term of probation, Respondent shall: (a) demonstrate resolution
17 of the problems that resulted in this disciplinary action; and (b) otherwise comply with
18 the terms of this Consent Agreement.

19 3. Respondent shall complete the following education within six (6) months of
20 the effective date of this Consent Agreement: **a fifteen (15) hour USPAP course (with**
21 **exam). In addition, the Board acknowledges and accepts Respondent's recent**
22 **completion of the seven (7) hour 2012-2013 USPAP Update course.** The education
23 required under this paragraph **may not be counted toward the continuing education**
24 **requirements for the renewal of Respondent's certificate except that the 2012-2013**
25 **USPAP Update course may be counted toward the renewal of Respondent's**

1 **certificate.** The same class may not be repeated to fulfill the education requirements of
2 this Consent Agreement.

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

5 5. During the period of probation, Respondent shall complete a minimum of
6 **twelve (12) appraisal reports** under the supervision of an Arizona Certified Residential
7 or Certified General Appraiser who shall serve as Respondent's mentor ("Mentor"). **The**
8 **appraisal reports may be demonstration reports.**

9 6. During the probationary period, the Respondent shall not issue a verbal or
10 written appraisal, appraisal review, or consulting assignment without prior review and
11 approval by a Mentor. Each report shall **either** be signed by the Mentor as a supervisory
12 appraiser **or** the Mentor must complete a written review of each report ensuring that the
13 report complies with USPAP and the Board's statutes and rules. The Mentor's review
14 shall comply with the requirements of Standard 3 of the USPAP. The Mentor's Standard
15 3 review shall be completed before the report is issued to the client. Any changes the
16 Mentor requires to ensure the report complies with the USPAP shall be completed by the
17 Respondent and approved by the Mentor before the report is issued. The Mentor's written
18 Standard 3 review shall be maintained by the Mentor and made available to the Board
19 upon request.

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

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

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

10 10. The Mentor shall submit monthly reports to the Board for each calendar
11 month during Respondent's probationary period reflecting the quantity and quality of
12 Respondent's work, including, but not limited to, improvement in Respondent's practice
13 and resolution of those problems that prompted this action. The Mentor's report shall be
14 filed monthly beginning the 1st day of the first month following the start of Respondent's
15 probationary period and continuing each month thereafter until termination of the
16 probationary period by the Board. **Even if the Mentor reviews no appraisals during a
17 given month, a report stating that no appraisals were reviewed or approved must be
18 submitted. It is the Respondent's responsibility to ensure that the Mentor submits
19 his/her reports monthly.** If the monthly reporting date falls on a Saturday, Sunday, or
20 holiday, the report is due on the next business day. The monthly report may be filed by
21 mail or facsimile.

22 11. The Respondent shall file an appraisal log with the Board on a monthly
23 basis listing every Arizona appraisal that he has completed within the prior calendar
24 month by property address, appraisal type, valuation date, the Mentor's review date, the
25 date the appraisal was issued, and the number of hours worked on each assignment. The
26 report log shall be filed monthly beginning the 1st day of the first month following the

1 start of Respondent's probationary period and continuing each month thereafter until the
2 Board terminates the probation. If the log reporting date falls on a Saturday, Sunday, or
3 holiday, the report log is due on the next business day. **Even if Respondent performs**
4 **no appraisals within a given month, he must still file an appraisal log with the Board**
5 **showing that no appraisals were performed.** The monthly log report may be filed by
6 mail or facsimile.

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

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

17 14. At the end of **six (6) months** from the effective date of this Consent
18 Agreement, the Respondent may petition the Board for termination of his mentorship and
19 probation. If the Board determines that Respondent has not complied with **all** the
20 requirements of this Consent Agreement, the Board, at its sole discretion, may either: (a)
21 continue the probation, including mentorship; or (b) institute proceedings for
22 noncompliance with this Consent Agreement, which may result in suspension,
23 revocation, or other disciplinary and/or remedial action.

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

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

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

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

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

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

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

25 22. Time is of the essence with regard to this agreement.
26

1 23. If Respondent fails to comply with the terms of this Consent Agreement,
2 the Board shall properly institute proceedings for noncompliance with this Consent
3 Agreement, which may result in suspension, revocation, or other disciplinary and/or
4 remedial actions. Respondent agrees that any violation of this Consent Agreement is a
5 violation of A.R.S. § 32-3631(A)(8), which is willfully disregarding or violating any of
6 the provisions of the Board's statutes or the rules of the Board for the administration and
7 enforcement of its statutes.

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

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

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

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

25 DATED this 23 day of AUGUST, 2012.

1 Jay C. Lundberg
2 Jay C. Lundberg
3 Respondent

Margaret Burns
~~Dan Pietropaulo~~ MARGARET BURNS
Interim Executive Director
Arizona Board of Appraisal

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6 **ORIGINAL** of the foregoing filed
7 this 23 day of August, 2012 with:

8 Arizona Board of Appraisal
9 1400 West Washington Street, Suite 360
Phoenix, Arizona 85007

10 **COPY** of the foregoing mailed regular
and certified mail 7009 1680 0000 7387 0897
11 this 23 day of August, 2012 to:

12 Jay C. Lundberg
13 15542 N. 77th Drive
Surprise, AZ 85388

14 **COPY** of the foregoing sent or delivered
15 this 23 day of August, 2012 to:

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

19
20 By: Rebecca M. Lear
21 2765662 Rebecca M. Lear, Regulatory Compliance Officer
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