BEFORE THE ARIZONA BOARD OF APPRAISAL

FOR THE STATE OF ARIZONA

IN THE MATTER OF: **JAMES R. NELSON,** Holder of Certificate No. 30173; Certified General Appraiser in the State of Arizona, Respondent.	Case Nos: 3071, 3185, 3195, 3199 and 3226 **CONSENT AGREEMENT FOR VOLUNTARY SUSPENSION AND ORDER OF PROBATION**

In the interest of a prompt and judicious settlement of the above-captioned matters 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 R. Nelson ("Respondent"), holder of Certificate No. 30173 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 February 7, 2011, the Board met to discuss Case Nos. 3071, 3185, 3195, 3199 and 3226. Despite having been properly noticed, Respondent did not appear. At the conclusion of the Board's consideration of these matters, the Board voted to summarily suspend Respondent's appraisal certification. A hearing before the Office of Administrative Hearings was scheduled for May 10, 2011. On April 22, 2011, Respondent and his attorney, Michael H. Orcutt appeared before the Board and offered the Board certain conditions and terms in settlement of these matters. At the conclusion of its consideration of Respondent's offer of settlement the Board voted to offer 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 General Appraiser in the State of Arizona, Certificate No. 30173 issued on August 15, 1991, 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.

Without admitting or denying the following Findings of Fact and Conclusions of Law, Respondent does acknowledge that the Board of Appraisal has alleged evidence to support these Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

Case No. 3071

1. On February 5, 2010, the Board received complaint no. 3071 filed by Ms. Janet L. Ferguson and against Respondent.

2. According to the complaint filed by Ms. Ferguson, she paid Respondent $4,000.00 to conduct an appraisal of properties in Bullhead City, AZ and in Needles, CA. Ms. Ferguson paid Respondent in advance of him completing the appraisals.

3. According to Ms. Ferguson, the Respondent never completed the appraisals, kept the $4,000.00 he was paid by Ms. Ferguson and never responded to her when she attempted to contact him via telephone, email, fax and US mail. Ms. Ferguson was required to hire another appraiser to conduct the appraisals.

4. On or about February 22, 2010, the Board sent Ms. Ferguson's complaint to the Respondent and asked him to respond to the complaint and to provide complete copy of the appraisals and his workfiles for the properties for which

he was paid to conduct appraisals. The Respondent failed to timely respond to the complaint nor did he timely provide a copy of the appraisals or the workfiles.

5. In accordance with A.R.S. §32-3631(C), on or about July 27, 2010 the Board issued a Subpoena Duces Tecum to the Respondent requiring him to produce the appraisals and workfiles for the above-referenced properties. The Subpoena required the Respondent to produce the documents on or before August 9, 2010.

6. The Respondent did not respond to the Subpoena dated July 27, 2010.

Case No. 3185

1. At its October 21, 2010 Board meeting, the Board considered Respondent's non-compliance with the Subpoena Duces Tecum issued in Case No. 3071.

2. At the conclusion of its consideration of the matter, the Board voted to open complaint no. 3185 against Respondent for his failure to respond to the Subpoena Duces Tecum issued to him on July 27, 2010 in case no. 3071.

3. On or about November 18, 2010, the Board notified the Respondent in writing of complaint no. 3185 and asked him to submit a written response to the complaint on or before December 18, 2010.

4. Respondent did not timely respond to complaint no. 3185.

Case No. 3195

1. On November 29, 2010, the Board received complaint no. 3195 filed by Mr. Gary Dormanen and against Respondent.

2. According to the complaint filed by Mr. Dormanen, he paid Respondent $750.00 to conduct an appraisal of a property located in Taylor, AZ. Mr. Dormanen paid Respondent in advance of Respondent completing the appraisal.

3. According to Mr. Dormanen, the Respondent never completed the appraisal, kept the $750.00 he was paid by Mr. Dormanen and never responded to Mr. Dormanen when Mr. Dormanen attempted to contact the Respondent via telephone and email. Mr. Dormanen was required to hire another appraiser to conduct the appraisal of his residence.

4. On or about December 6, 2010, the Board sent Mr. Dormanen's complaint to the Respondent and asked him to respond to the complaint and to provide a complete copy of the appraisal and the workfile for the property for which he was paid to conduct an appraisal. The Respondent failed to timely respond to the complaint nor did he timely provide a copy of his appraisal and workfile.

Case No. 3199

1. On December 1, 2010, the Board received complaint no. 3199 filed by Mr. Don A. Workman and against Respondent.

2. According to the complaint filed by Mr. Workman, on or about July 9, 2010, he paid Respondent $3,000.00 to conduct an appraisal of a property located in Snow Flake, AZ. Mr. Workman paid Respondent the $3,000.00 in advance of Respondent completing the appraisal.

3. According to Mr. Workman, the Respondent never completed the appraisal, kept the $3,000.00 he received from Mr. Workman and responded to him

only once after numerous attempts to reach him. Respondent then failed to provide the appraisal as promised. Mr. Workman was required to hire another appraiser and pay a fee for an expedited appraisal when Respondent failed to perform the appraisal for which he was paid.

4. On or about December 15, 2010, the Board sent Mr. Workman's complaint to the Respondent and asked him to respond to the complaint and to provide a complete copy of his and appraisal and workfile for the property for which he was paid to conduct the appraisal. The Respondent failed to timely respond to the complaint nor did he timely provide a copy of his appraisal and workfile.

Case No. 3226

1. On January 19, 2011, the Board received complaint no. 3226 filed by Ms. Kimberly A. Lane, Esq., on behalf of Lawyers Title Insurance Corporation ("Lawyers Title) and against Respondent.

2. According to the complaint filed by Ms. Lane, on or about July 2010, Lawyers Title contacted Respondent and requested that he perform an appraisal of vacant land located near Heber, AZ.

3. On or about July 20, 2010, Respondent submitted an Invoice to Lawyers Title in the amount of $2, 500 for "Appraisal Services on vacant land located near Heber, Az."

4. On or about July 21, 2010, Lawyers Title issued a check to Respondent in the amount of $2, 500 for payment of Respondent's appraisal services and on July 27, 2010 Respondent cashed the check.

5. According to Ms. Lane, Respondent has not completed the appraisal despite having been paid in full to conduct the appraisal.

6. On or about January 27, 2011, the Board sent Ms. Lane's complaint to the Respondent and asked him to respond to the complaint and to provide a complete copy of his and appraisal and workfile for the property for which he was paid to conduct the appraisal. The Respondent was requested to respond to complaint no. 3226 on or before February 26, 2011.

7. Respondent did not provide a timely response to the complaint nor did he timely provide a copy of his appraisal and workfile to the Board.

CONCLUSIONS OF LAW

1. The Board has personal and subject matter jurisdiction in this case under A.R.S. § 32-3601 *et seq.*, and is authorized to seek disciplinary action against any licensed or certified real property appraiser in the State of Arizona for violations statute, rule or the standards of practice adopted by the Board.

2. It is the Board's position that the conduct and circumstances set forth in the Findings of Fact relating to Complaint Nos. 3071, 3195, 3199 and 3226 constitute a violation of A.R.S. § 32-3631(A)(5).

3. In addition, the conduct and circumstances set forth in the Findings of Fact relating to Complaint Nos. 3071, 3195, 3199 and 3226 constitute a violation of Uniform Standards of Professional Appraisal Practice, Ethics Rule---Conduct which requires that an appraiser must perform assignments ethically and competently.

4. Finally, the conduct and circumstances set forth in the Findings of Fact relating to Complaint No. 3185 constitute a violation of A.R.S. § 32-3631(A)(8), which provides, in part, that the rights of a state certified appraiser may be revoked or suspended for any of the grounds set forth in this section, including but not limited to (8) willfully disregarding or violating any of the provisions of this chapter or the rules of the board for the administration and enforcement of this chapter.

ORDER

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

1. **Respondent's Certificate as a Certified General Appraiser shall be placed on suspension for a period of ninety (90) days, retroactive to February 7, 2011, the date that Respondent's certificate was summarily suspended. Respondent's certificate shall remain suspended up to, through and including May 8, 2011.**

2. **From and after May 9, 2011,** Respondent's certificate shall be **placed on probation for a minimum period of twelve (12) months.** During probation, Respondent shall comply with USPAP, Arizona Revised Statutes and Appraisal Board rules.

3. Respondent shall successfully complete the following education within **twelve (12) months** of the effective date of this Consent Agreement: **Five (5) hours of business practices (to include ethics).** The education under this paragraph **may not** be counted toward the continuing education requirements for the renewal of Respondent's certificate. **The coursework may be completed through distance education.** 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 course. Respondent shall be responsible for all costs associated with completing the coursework.

5. 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.

6. Within thirty (30) days of the effective date of this Consent Agreement (the effective date is the date this Consent Agreement is signed by the Executive Director on behalf of the Board) Respondent shall provide to the Board proof of his establishment of an account with United Parcel Service to (1) ensure delivery of each and every appraisal with no additional cost to the client and (2) ensure receipt of written communication from the Board.

7. In addition, within thirty (30) days of the effective date of this Consent Agreement, Respondent shall provide to the Board written confirmation of the establishment of a new email account with Google.

8. 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 15th day of the first month following the start of Respondent's probationary period and continuing each month thereafter until the Board terminates the probation. **The log shall also set forth the method of delivery Respondent used to ensure delivery of each completed appraisal.** 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 as well as**

the information regarding restitution set forth in paragraph 10. The monthly log report may be filed by mail or facsimile.

9. 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.

10. During the probationary period, Respondent shall make restitution to the complainants in complaint nos. 3071, 3195, 3199 and 3226 for the full amount the complainants paid to Respondent for the appraisals ordered. Specifically, Respondent shall make restitution to the complainants in the following sums: Ms. Janet Ferguson $4,000; Mr. Gary Dormanen $750.00; Mr. Don A. Workman $3,000; and Lawyers Title Insurance Corporation $2,500. **In addition to the information contained in Respondent's monthly logs as set forth in paragraph 8 above, Respondent shall include as part of his monthly logs an update to the Board documenting his efforts in satisfying the restitution. Respondent's term of probation shall continue until Respondent satisfies his restitution obligation to each complainant.**

11. Respondent's probation shall continue until: (a) Respondent petitions the Board for termination as provided in paragraph 12, <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.

12. At the end of **twelve (12) months** from the effective date of this Consent Agreement, the Respondent may petition the Board 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.

13. 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.

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

15. If, between the effective date of this Consent Agreement and the termination of Respondent's probation by the Board, Respondent fails to renew his license 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.

16. 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.

17. 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.

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

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

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

21. 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.

22. 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.

23. 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.

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

25. 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 13th day of May, 2011.

_____
James R. Nelson
Respondent

ARIZONA STATE BOARD OF APPRAISAL

Dan Pietropaulo
Executive Director, Arizona State Board of Appraisal

ORIGINAL filed
this 13 day of May, 2011 to:

Arizona State Board of Appraisal
1400 W. Washington, Suite 360
Phoenix, Arizona 85007

COPY of the foregoing mailed
Via regular mail this 13 day of May, 2011 to:

Mr. Michael Orcutt
MACK DRUCKER & WATSON
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James R. Nelson
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Heber, AZ 85928

COPY of the foregoing mailed this
13 day of May, 2011 to:

Jeanne M. Galvin
Assistant Attorney General
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Attorney for the State of Arizona

By: Rebecca M. Loar

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