

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
GARY PHILLIPS

Gary Phillips (“Phillips”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Phillips’s certification as a state-certified residential real estate appraiser, no. RA001524, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREAC under § 621.110, RSMo Cum. Supp. 2009. The MREAC and Phillips jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Cum. Supp. 2009.

Phillips acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against him at the hearing; the right to present evidence on his behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

administrative hearing commissioner concerning the charges pending against him; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREAC at which time Phillips may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREAC.

Being aware of these rights provided to him by law, Phillips knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Phillips acknowledges that he has received a copy of documents that were the basis upon which the MREAC determined there was cause for discipline, along with citations to law and/or regulations the MREAC believes were violated. Phillips stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Phillips's certification as a state-certified residential real estate appraiser, certificate no. RA001524, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapters 621 and 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Phillips in Part II herein is based only on the agreement set out in Part I herein. Phillips understands that the MREAC may take further disciplinary action against him

based on facts or conduct not specifically mentioned in this document that are either now known to the MREAC or may be discovered.

I.
Joint Stipulation of Facts and Conclusions of Law

Based upon the foregoing, the MREAC and Phillips herein jointly stipulate to the following:

1. On or about October 10, 2006, Phillips prepared an appraisal report for commercial property located at 2600 North Powell Road, Independence, MO 64050 (“Powell Appraisal Report”).
2. On or about October 10, 2006, Phillips prepared an appraisal report for commercial property located at 12603 South Missouri Highway 7, Lake Lotawana, MO 64086 (“Lake Lotawana Appraisal Report”).
3. On or about September 22, 2008, Gary Phillips prepared an appraisal report for commercial property located at 9010 S. Missouri Highway 7, Lee’s Summit, MO 64064 (“Lee’s Summit Appraisal Report”).
4. Phillips certification as a Missouri state-certified residential real estate Appraiser became active on August 23, 1991 and remained active at all times relevant herein.
5. Phillips certificate expires on June 30, 2012.
6. Missouri regulation 20 CSR 2245-9.010(3)(B), states:

State-certified residential real estate appraisers may perform appraisals on residential real estate of one to four (1-4)

residential units without regard to transaction value or complexity and may perform appraisal consulting in the area of residential real estate, if, and only if, performed in compliance with all state and federal laws, rules and regulations pertaining to the appraisal assignment. This designation permits the appraisal of vacant or unimproved land that may be utilized for one to four- (1-4) family purposes. This certification does not permit the appraisal of subdivisions or of agricultural real estate. Individual parcels of property located within a residential subdivision shall be considered residential real estate. For all other appraisals, the appraisal report shall be signed by the state-certified residential real estate appraiser and a state-certified general real estate appraiser . . .

7. Phillips violated Missouri regulation 20 CSR 2245-9.010 (3)(B) by performing commercial appraisals on the Powell, Lee's Summit, and Lake Lotawana Appraisal Reports when his certificate only permits residential real estate appraisals.

8. The preparation of the Powell and Lake Lotawana Appraisal Reports were required to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2006 Edition. The cited provisions of USPAP, 2006 Edition are attached hereto as Exhibit A.

9. The preparation of the Lee's Summit Appraisal Report was required to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice ("USPAP"), 2008 Edition. The cited provisions of USPAP, 2008 Edition are attached hereto as Exhibit B.

10. Based on the following errors and omissions in the preparation of the Lake Lotwana Appraisal Report, Phillips is in violation of § 339.535, RSMo; the USPAP Ethics

Rule; the USPAP Competency Rule; the USPAP Scope of Work Rule; USPAP Standards Rule 1 and 2; and USPAP Standards Rule 1-1(a), (b) and (c), 1-2(a),(b), (e), (f) and (h), 1-3(a) and (b), 1-4(a) and (e), 1-6(a), 2-1(a),(b) and (c), 2-2(b)(i), (ii), (iii), (vii), (viii), (ix) and (x):

- i. Phillips valued platted lots, commercial land, clubhouse & pool, and vacant residential development ground, yet the only analysis is for the platted lots;
- ii. Phillips failed to define the proper scope of work and definition of the appraisal problem;
- iii. Phillips identified the report as a limited report which is not a proper description under the applicable version by USPAP;
- iv. Phillips made errors in platted lot valuation;
- v. Phillips failed to identify the client and other intended users;
- vi. Phillips failed to identify the intended use of his opinions and conclusions;
- vii. Phillips failed to describe the property's location and physical, legal, and economic attributes adequately;
- viii. Phillips's report lacks an adequate description of the scope of work;
- ix. Phillips's report is void of any discussion relating to land use regulations for the subject property;

- x. Phillips incorrectly analyzed the comparable sales leading to unsupported and incorrect conclusions.
- xi. Phillips failed to describe how the clubhouse and pool were valued and did not include such analysis in the report.
- xii. Phillips incorrectly added up component parts to form an opinion of value.
- xiii. Phillips failed to properly use valuation procedures which resulted in flawed analysis and reconciliations.
- xiv. Phillips failed to discuss the applicability of approaches used in valuation.
- xv. Phillips's entire report is misleading.
- xvi. Phillips's appraisal, though restricted, cannot be properly understood as it contains too many errors of fact and valuation to be considered valid or reliable.
- xvii. Phillips failed to clearly and accurately disclose all extraordinary assumptions that would have been necessary to have reached his conclusions.
- xviii. Phillips failed to provide the physical and economic characteristics of the property.
- xix. Phillips failed to summarize valuation methods and techniques performed in the reconciliation.

xx. Phillips failed to provide an adequate highest and best use analysis for the subject property.

11. Based on the following errors and omissions in the preparation of the Lee's Summit Appraisal Report, Phillips is in violation of § 339.535, RSMo; the USPAP Ethics Rule; the USPAP Competency Rule; the USPAP Scope of Work Rule; USPAP Standards Rule 1 and 2; and USPAP Standards Rule 1-1(a), (b) and(c), 1-2(a), (b), (e), (f) and (h), 1-3(a) and (b), 1-4(a) and (e), 1-6(a) and (b), 2-1(a), (b) and (c), 2-2(b)(i), (ii), (iii), (vii), (viii), (ix) and (x).

i. Phillips's form, scope of work, analyses, methods and techniques were all inadequate or incorrect;

ii. Phillips omitted pertinent reporting format, discussion of property characteristics, and highest and best use analysis;

iii. Phillips failed to identify intended users in the report;

iv. Phillips failed to identify the intended use in the report;

v. Phillips provided an inadequate description of the property characteristics, the market, and the economic factors.

vi. Phillips used incorrect application of adjustments rendering the approach unreliable.

vii. Phillips's reconciliation employed incorrect methodology resulting in incorrect results.

viii. Phillips failed to provide a discussion of applicability of the approaches attempted or not attempted.

ix. Phillips used incorrect math and methodology that lead to misleading conclusions.

x. Phillips failed to prominently state which reporting option is being used.

II.

Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREAC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Cum. Supp. 2009.

1. **Phillips's certification is on probation.** Phillips's certification as a state-certified residential real estate appraiser is hereby placed on PROBATION for a period of TWO (2) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Phillips shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, as amended, provided Phillips adheres to all the terms of this agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

A. Phillips shall submit written reports to the MREAC by no later than January 1 and July 1, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Settlement

Agreement. The first written report shall be submitted on or before January 1, 2011. The final written report shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each written report shall be submitted no earlier than 30 days prior to the respective due date. Phillips is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Phillips shall maintain a log of all appraisal assignments as required by 20 CSR 2245-2.050. A true and accurate copy of the log shall be submitted to the MREAC by no later than January 1 and July 1 during each year of the disciplinary period. The first log shall be submitted on or before January 1, 2011. The last log shall be submitted to the MREAC 90 days prior to the end of the disciplinary period. Each log submitted shall be current to at least 30 days prior to the respective due date. Phillips is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Phillips shall submit copies of his work samples for MREAC review.

C. Within six months after the effective date of this Settlement Agreement, Phillips shall submit verification to the MREAC of successful completion of the fifteen-hour approved National USPAP course, including examination. This course will not replace the 7-hour National USPAP course required by the general continuing education requirements.

D. Phillips may not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for certification renewal.

E. During the period of probation, Phillips shall not sign appraisal reports as a supervising appraiser.

F. During the disciplinary period, Phillips shall not serve as a supervising appraiser to trainee real estate appraisers under 20 CSR 2245-3.005. Within ten days of the effective date of this Settlement Agreement, Phillips shall advise each trainee real estate appraiser working under him that the supervisory relationship is terminated and comply with all other requirements of 20 CSR 2245-3.005 regarding the termination of the supervisory relationship.

G. During the disciplinary period, Phillips shall keep the MREAC apprised at all times in writing of his current work and home addresses and telephone numbers at each place of residence and employment. Phillips shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

H. Phillips shall timely renew his certification and timely pay all fees required for certification renewal and comply with all other MREAC requirements necessary to maintain his certification in a current and active state.

I. During the disciplinary period, Phillips shall comply with all provisions of §§ 339.500 through 339.549, RSMo, all rules and regulations promulgated thereunder, and all federal and state laws. “State” includes the state of Missouri and all other states and territories of the United States. Any cause to discipline Phillips’s certification as a real estate appraiser under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

J. Phillips shall accept and comply with reasonable unannounced visits from the MREAC’s duly authorized agents to monitor compliance with the terms and conditions stated herein.

K. Phillips shall appear before the MREAC or its representative for a personal interview upon the MREAC’s written request.

L. If, at any time within the disciplinary period, Phillips removes himself from the state of Missouri, ceases to be currently certified under the provisions of §§ 339.500 through 339.549, RSMo, or fails to keep the MREAC advised of all current places of residence and business, the time of absence, uncertified status or unknown whereabouts shall not be deemed or taken as any part of the disciplinary period.

3. Upon the expiration of the disciplinary period, the certification of Phillips shall be fully restored if all requirements of law have been satisfied; provided, however,

that in the event the MREAC determines that Phillips has violated any term or condition of this Settlement Agreement, the MREAC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Phillips's certification.

4. No additional discipline shall be imposed by the MREAC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREAC as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by Phillips of §§ 339.500 through 339.549, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

6. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREAC or may be discovered.

7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREAC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Phillips agrees and stipulates that the MREAC has continuing

jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

8. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

10. The parties to this Settlement Agreement understand that the MREAC will maintain this Settlement Agreement as an open record of the MREAC as required by Chapters 339, 610, and 324, RSMo, as amended.

11. Phillips, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out

of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

12. Phillips understands that he may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Phillips's certification. If Phillips desires the Administrative Hearing Commission to review this Settlement Agreement, Phillips may submit his request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65102.

13. If Phillips requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Phillips's certification. If Phillips does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

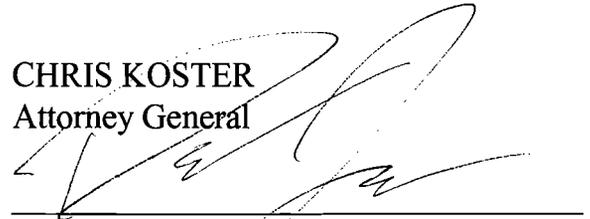
LICENSEE

Gary Phillips 10/2/2010
Gary Phillips Date

MISSOURI REAL ESTATE
APPRAISERS COMMISSION

Vanessa Beauchamp
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