

SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE APPRAISERS
COMMISSION AND JAMES DOWNEY

James Downey (“Downey”) and the Missouri Real Estate Appraisers Commission (“MREAC”) enter into this Settlement Agreement for the purpose of resolving the question of whether Downey’s certification as a state-certified general real estate appraiser, Certificate No. RA002523, 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 Downey 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.

Downey 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 administrative hearing commissioner concerning the charges pending against

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

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 Downey may present evidence in mitigation of discipline; the right to seek recovery of 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, Downey 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.

Downey 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. Downey stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Downey's certification as a real estate appraiser, Certificate No. RA002523, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapters 339.500 through 339.549 and 621, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREAC and Downey in Part II herein is based only on the agreement set out in Part I herein.

I.
Joint Stipulation of Facts

Based upon the foregoing, the MREAC and Downey herein jointly stipulate:

1. The MREAC was established pursuant to § 339.507, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, as amended.

2. Downey is certified by the MREAC as a state-certified general real estate appraiser (Certificate No. RA002523). Such certification is, and was at all times relevant to this action, current and active.

3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo (Cum. Supp. 2009) and § 339.532.2, RSMo (Cum. Supp. 2009).

4. On or about September 30, 2008, Downey completed and signed an appraisal report, which he referred to as a “property evaluation,” for real estate located at Section 21, Township 55N, Range 37W, Rushville, Missouri 64484 (“the Rushville property”). No effective date was stated in Downey’s report and Downey valued the Rushville property as a whole at five hundred thirty thousand four hundred dollars (\$530,400). Downey’s appraisal report shall be referred to hereinafter as the “Rushville Report.”

5. Downey was required to develop and report the results of the Rushville Report in compliance with the Uniform Standards of Professional Appraisal Practice (“USPAP”), 2008-2009 Edition.

6. The Rushville Report was prepared for Barbara Sonnenmoser.

7. In preparing, developing, and reporting the results for the Rushville Report, Downey committed errors and omissions that violated Standards 1 and 2, and Standards Rules (SR) 1-1(a), (b), and (c), 1-2(a), (b), (c), (d), (e)(i)(ii), and (h), 1-3(b), 1-4(a) and (c)(i)(ii)(iii)(iv), 1-5(a) and (b), 1-6(a) and (b), 2-1(a), (b), and (c), and 2-2(b)(i)(ii)(iii)(iv)(v)(vi)(vii)(viii)(ix) and (xi) of USPAP, including, but not limited to:

a. Improperly developed and reported a USPAP compliant report that was devoid of correct methods or techniques;

b. Omitted various elements necessary for a credible report, including, but not limited to, physical characteristics of the subject property, highest and best use of the subject property, report dates, type of report, intended use of the report, intended users of the report, definition of market value, and scope of the work in the report;

c. The adequacy of the sales comparison approach cannot be determined from the report due to the lack of supporting data and analysis;

d. Did not attempt an income analysis as part of the report despite the fact that an income approach is likely a reasonable approach for the subject property because the property is capable of generating income;

e. Failed to analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the subject property;

f. Failed to analyze all sales of the subject property that occurred within the three years prior to the effective date of the report;

g. Failed to reconcile the quality and quantity of data available and analyzed within the approached used;

h. Failed to reconcile the applicability or suitability of the approaches used to arrive at the value concluded for the subject property;

i. Failed to clearly and accurately set forth the appraisal in a manner that would not be misleading;

j. Failed to include sufficient information to enable intended users to understand the report, including the type of value for the subject property, characteristics of the subject property, and market analyses for different approaches to value; and

k. Failed to clearly and accurately disclose all assumptions, extraordinary assumptions, hypothetical conditions, and limiting conditions used in the report.

8. On or about February 25, 2006, Downey supervised and signed a summary appraisal report prepared by appraiser James Rothermich for small residential income property real estate located at 18640 through 18651 Country Place Court, St. Joseph, Missouri (“the 18640 County Place property”). The effective date of the appraisal report was February 11, 2006. This appraisal valued the property at one hundred thirty-eight thousand dollars (\$138,000) per unit. This appraisal shall be referred to hereinafter as the “18640 Country Place Report.”

9. Downey was required to develop and report the results of the 18640 Country Place Report in compliance with USPAP, 2005 Edition.

10. The 18640 County Place Report was prepared for Farmer’s State Bank of Northern Missouri.

11. In developing and reporting the results for the 18640 County Place Report, Downey committed errors and omissions that violated Standards 1 and 2, and Standards Rules (SR) 1-1(a) and (c), 1-2(e), 1-4(b), (c), (d) and (e), 1-6(a) and (b), and 2-2 (b)(iii), (iv), and (ix), of USPAP, including, but not limited to:

a. Downey’s report is for six duplexes in which only one duplex is valued and the total value for all duplexes is calculated by multiplying the one valued duplex by six. While Downey’s report contains a cover letter that states all of the duplexes are of similar age and condition, there is no explanation or description of the duplexes indicating whether they are all the same size, on the same

size lots, of the same construction quality, or on the same floor plan;

b. Downey's report is confusing and misleading in that in the subject section on page 6, it states leasehold interest is to be valued despite the fact that leasehold interest is not valued in the report and the supplemental addendum to the report indicates that the "Property Rights Appraisal" is fee simple;

c. The sales comparison reconciliation states that total land size is divided by six to obtain individual site size for each duplex. This appears to be in conflict with the plat map addendum that does not indicate six identical lots. Downey's report inadequately describes the site because it is unclear whether an individual, platted site exists for each duplex or whether they are on one larger site;

d. The cost approach used does not contain support for the land value, no land sales are provided, and there is no reconciliation of the cost approach;

e. The sales comparison approach used does not appropriately contain a gross building area adjustment for Sales 1 and 2 and does not contain an explanation or adjustment that the subject property site is slightly over 3 times larger than the sites of Sales 1 and 2;

f. The sales comparison approach used contains no adjustment for parking. Each unit is shown as having an attached garage while all sales are reported to have off-street parking;

g. The income approach used contains no data or support for projected rents as said rents are based solely upon Downey's opinion;

h. The income approach used contains no reconciliation of said approach and no consideration is given to the income approach in the appraisal even though the subject property is income producing that appeals to market participants based on the income it produces;

i. The operating income statement appears to have excessive expenses for taxes and licenses of \$5,800;

j. The reconciliation of the cost, sales comparison, and income approaches, located in the addendum, lacks credibility and accuracy. The reconciliation incorrectly states that the subject property is a single family residential property and that the income approach is not applicable. As a result, Downey's report lacks an appropriate reconciliation;

k. As a result of each of the foregoing, Downey failed to adequately describe the reasons supporting his analyses, opinions,

and conclusions of the subject property value; and

1. As a result of the foregoing, Downey concluded a value for the subject property that was not credible, misleading and/or failed to sufficiently or competently analyze or explain adjustments in his appraisal or estimation of value.

12. On or about February 7, 2006, Downey supervised, reviewed, and signed a complete summary appraisal report prepared by appraiser James Rothermich for commercial real estate located at 5507 K Highway, St. Joseph, Missouri (“the 5507 K Highway property”). The effective date of the appraisal report was February 6, 2006. This appraisal valued the property at three hundred fifty thousand dollars (\$350,000). This appraisal shall be referred to hereinafter as the “5507 K Highway Report.”

13. Downey was required to develop and report the results of the 5507 K Highway Report in compliance with USPAP, 2005 Edition.

14. The 5507 K Highway Report was prepared for Farmers State Bank of Northern Missouri.

15. In developing and reporting the results for the 5507 Appraisal, Downey committed errors and omissions that violated Standards 1 and 2, and Standards Rules (SR) 1-1(a) and (c), 1-2(c) and (e), 1-4(a), (b), and (c), 1-6(a) and (b), and 2-2 (b)(v) and (ix), of USPAP, including, but not limited to:

a. The report is confusing and potentially misleading when it states on page 10 that the appraiser is estimating value for “a

Commercial entity similar to the subject at this location...”;

b. The ownership rights being appraised, as stated in the report, are unclear in that different portions of the report refer to either “fee simple” or “leased simple”;

c. The report refers to “marketing time”, but fails to address exposure time;

d. The cost approach used in the report is flawed in that:
1) land value by the extraction method does not allow for age depreciation; 2) site improvements are depreciated at the same rate as building improvements; and 3) there is no reconciliation of the cost approach;

e. The sales comparison approach used in the report is flawed in that: 1) “\$/sq.ft.” adjustments in the grid are not supported; 2) Sale #1 incorrectly used additional units that were added after the sale; and 3) the reconciliation is poor;

f. The income approach used in the report contains no support for referenced items such as rents, the “\$/sq.ft.” ratio , and 5% vacancy and collection loss. While the subject property includes a warehouse, office building, and mini-warehouse storage units, which the market would normally indicate having different rents, expenses, and capitalization rates, the report uses a single

capitalization rate inclusive of all buildings without any explanation of how it is derived;

g. Overall, the income used in the report does not appear to be supported by the market, there is no support for the capitalization rate used, and vacancy expenses are not supported;

h. The reconciliation of the cost, sales comparison, and income approaches is not logical because Downey gives the least amount of support to the sales comparison approach, despite the fact this is the only market support in the appraisal, and Downey gives the most weight to the cost and income approaches even though the cost approach appears least reliable;

i. As a result of each of the foregoing, Downey failed to adequately describe the reasons supporting his analyses, opinions, and conclusions of the subject property value; and

j. As a result of the foregoing, Downey concluded a value for the subject property that was not credible, misleading, and/or failed to sufficiently or competently analyze or explain adjustments in his appraisal or estimation of value.

16. On or about January 19, 2006, Downey supervised, reviewed, and signed a complete summary appraisal report prepared by appraiser James Rothermich for commercial real estate located at 6112 North 71 Highway, St. Joseph, Missouri (“the

6112 North 71 Highway property”). The effective date of the appraisal report was January 18, 2006. This appraisal valued the property at eight hundred forty thousand dollars (\$840,000). This appraisal shall be referred to hereinafter as the “6112 North 71 Highway Report.”

17. Downey was required to develop and report the results of the 6112 North 71 Highway Report in compliance with USPAP, 2005 Edition.

18. The 6112 North 71 Highway Report was prepared for Farmers State Bank of Northern Missouri.

19. In developing and reporting the results for the 6112 Appraisal, Downey committed errors and omissions that violated Standards 1 and 2, and Standards Rules (SR) 1-1(a), (b) and (c), 1-2(c), 1-4(a), (b), (c), and (g), 1-6(a) and (b), and 2-2 (b)(iii), (iv), and (ix), of USPAP, including, but not limited to:

a. The report is confusing and misleading because Downey states he is estimating the “going-concern value” and then states he is valuing the subject property at market value, fee simple estate;

b. The aforementioned conflicting valuation contained in the report is problematic because if “going-concern value” is the value sought, Downey did not properly address the effect the personal property component had on valuation or discuss business valuation, and if market value is the value sought, Downey erred in

not considering the income approach to value considering most car washes are bought based on their income producing potential;

c. The report contains a section titled “Market Value” and, under the Purpose of the appraisal, market value is stated as the purpose. The sales comparison approach is only done for market value purposes, yet the cost approach attempts to give both going-concern and market value scenarios;

d. The report contains no income approach. Based upon the totality of the information contained in Downey’s report, the exclusion of an income approach is an egregious error;

e. Downey states “marketing time” in two parts of his report, but never addresses “exposure time”;

f. The cost approach contained in the report states different amounts for base costs of equipment and site value, undermining the credibility and validity of the results;

g. The cost approach contained in the report states different percentages for equipment depreciation (35% and 15%) and uses, at one point in the report, different rates for depreciation of equipment and real estate, while at another point in the report, uses the same rate for depreciation of equipment and real estate;

h. The report contains no reconciliation of the cost

approach;

i. The sales comparison approach contained in the report contains no grid or other information, except for an overall stated figure, to show adjustments to the comparables. Because the development of the adjustments and how they were derived is not included in the report or the work file material, there is no way to determine if the individual adjustments were reasonable;

j. The reconciliation of the cost, sales comparison, and income approaches is faulty. In developing market value, market data was used in the sales comparison approach, but Downey diminished its importance. The cost approach used by Downey does not appear to be developed by market data and as a result, its reliability is questionable;

k. Personal property items are stated, defined, and included in the report, but their effect on value is not discussed in all approaches or the reconciliation;

l. As a result of each of the foregoing, Downey failed to adequately describe the reasons supporting his analyses, opinions, and conclusions of the subject property value; and

m. As a result of the foregoing, Downey concluded a value for the subject property that was not credible, misleading

and/or failed to sufficiently or competently analyze or explain adjustments in his appraisal or estimation of value.

Conclusions of Law

20. Section 339.535, RSMo, states:

State certified real estate appraisers and state licensed real estate appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation.

21. Based on the foregoing facts, cause exists to discipline the certification of Downey pursuant to Section 339.532.2, RSMo, which states in part:

The commission may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any state-certified real estate appraiser, state licensed real estate appraiser, or any person who has failed to renew or has surrendered his or her certificate or license for any one or any combination of the following causes:

(5) Incompetency, misconduct, gross negligence, dishonesty, fraud, or misrepresentation in the performance of the functions or duties of any profession licensed or regulated by sections 339.500 to 339.549;

(6) Violation of any of the standards for the development or communication of real estate appraisals as provided in or pursuant to sections 339.500 to 339.549;

(7) Failure to comply with the Uniform Standards of Professional Appraisal Practice [“USPAP”] promulgated by the appraisal standards board of the appraisal foundation;

(8) Failure or refusal without good cause to exercise reasonable diligence in developing an appraisal, preparing an appraisal report, or communication an appraisal;

(9) Negligence or incompetence in developing an appraisal, in preparing an appraisal report, or in communicating an appraisal;

(10) Violating, assisting or enabling any person to willfully disregard any of the provisions of sections 339.500 to 339.549 or the regulations of the commission for the administration and enforcement of the provisions of sections 339.500 to 339.549;

(14) Violation of any professional trust or confidence[.]

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 Commission in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo, as amended.

1. **Downey's certification is subject to a period of probation.** Downey's certification as a state-certified real estate appraiser is hereby placed on PROBATION for a period of TWO YEARS. The two-year period of probation shall constitute the "disciplinary period." During the disciplinary period, Downey shall be entitled to practice as a state-certified real estate appraiser under Chapter 339, RSMo, provided Downey adheres to all the terms of this Settlement Agreement.

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

A. Downey shall submit written reports to the MREAC by no later than December 1 and June 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 December 1, ~~2010~~. 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. Downey is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Downey 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 December 1 and June 1 during each year of the disciplinary period. The first log shall be submitted on or before December 1, ~~2010~~. 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. Downey is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Downey shall submit copies of his work samples for MREAC review.

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

D. During the disciplinary period, Downey 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, Downey 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.

E. During the disciplinary period, Downey 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. Downey shall notify the MREAC in writing of any change in address or telephone number within 15 days of a change in this information.

F. Downey 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.

G. During the disciplinary period, Downey 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 Downey'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.

H. Downey 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.

I. Downey shall appear before the MREAC or its representative for a personal interview upon the MREAC's written request.

J. If, at any time within the disciplinary period, Downey 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 Downey shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Downey 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 Downey'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 Downey 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. Downey 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 of 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

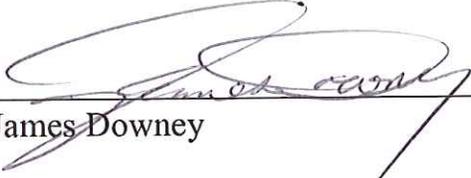
Chapters 339, 610, and 324, RSMo, as amended.

11. Downey, 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. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC. Upon full execution and finalization of this Settlement Agreement between the parties, including proper signatures from each party, the MREAC agrees to dismiss, with prejudice, its case against Downey currently pending before the Administrative Hearing Commission.

LICENSEE

MISSOURI REAL ESTATE APPRAISERS
COMMISSION



James Downey

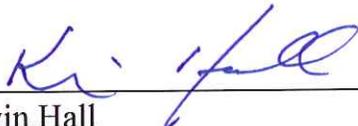


Vanessa Beauchamp
Executive Director

Date 4/20/11

Date 5-19-11

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