SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION AND JONATHAN TESTER

Come now Jonathan Tester ("Licensee") and the Missouri Real Estate Appraisers Commission ("Commission") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's state real estate appraiser license will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo,[1] the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Commission under § 621.110, RSMo. The parties jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo.

Licensee acknowledges that Licensee understands the various rights and privileges afforded Licensee by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against Licensee and, subsequently, the right to a disciplinary hearing before the Commission at which time Licensee may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against Licensee's license. Being aware of these rights provided Licensee by operation of law, Licensee 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 Licensee.

Licensee acknowledges that Licensee has received a copy of the documents relied upon by the Commission in determining there was cause to discipline Licensee's license, along with citations to law and/or regulations the Commission believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Commission that Licensee's license, numbered

---

[1] All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

2000143652 is subject to disciplinary action by the Commission in accordance with the provisions of Chapter 621 and §§ 339.500 to 339.549, RSMo.

Joint Stipulation of Fact and Conclusions of Law

1. The Commission is an agency of the state of Missouri created and established pursuant to § 339.507, RSMo, for the purpose of licensing all persons engaged in the practice of real estate appraisal in this state. The Commission has control and supervision of the licensed occupations and enforcement of the terms and provisions of Sections 339.500 to 339.549, RSMo.

2. Licensee, Jonathan Tester, holds a license from the Commission as a state licensed real estate appraiser, license number 2000143652. The Commission issued Licensee's license on January 6, 2000. Licensee's license expires June 30, 2014. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about August 9, 2012, the Commission received a complaint regarding Licensee's appraisal of property located at 801 W. Butterfield Trail, Cole Camp, Missouri (Butterfield Trail Appraisal). The complaint stated that Licensee's 2009 appraisal was inaccurate, incorrect and incomplete. Specifically, the complaint alleged that based on a 2011 review appraisal, Licensee's original appraisal: contained incomplete information in the subject information section; listed the median sales price as stable when MLS data indicated an increase from $71,000 to $73,500; indicated the Butterfield property to be outside city limits when it is actually inside city limits; listed an incorrect present land use; listed the average days on the market incorrectly; listed the subject size at 20,000 square feet when it is actually 6,156 square feet; incorrectly reported no zoning when the property is zoned residential; incorrectly listed main level square footage as 960 square feet when county records state it is 780 square feet; included comparable sale number 2 which could not be verified through local MLS databases; incorrectly stated a Cole Camp address for Comparable number 3 when it is actually in Lincoln, Missouri; listed comparable number 4 as an active listing when it expired prior to the effective date of the appraisal; and did not support adjustments for site size, basement area/finish differences and garage capacity. Additionally, the complaint stated that Licensee's value of the property, $145,000 was "an unreasonable opinion of market value" based on the review appraisal's value of $124,000 for the property at the time Licensee completed his appraisal. Finally, the complaint alleged that Licensee's 2009 appraisal failed to

make necessary adjustments, did not use the same method of measurement between the comparables and the subject, made unsupported adjustments and omitted subject/comparable features.

4. On or about November 16, 2012, Licensee provided the Commission with his response to the complaint. Licensee stated he stood by his appraisal of the Butterfield Trail property "100%." He stated the complainant filed the complaint because he "upset the wrong person, Larry Bahr, the President of the bank." Licensee disagreed with each of the identified problems with Licensee's appraisal, as stated in paragraph 3 above. Licensee completely disagreed with the review appraisal and the review appraiser's assessment that Licensee's appraisal was incorrect. Licensee stated that Third National Bank, for whom Licensee completed the appraisal "had no issues with the appraisal at the time completed." Licensee stated his adjustments were "typical and normal for the Pettis/Benton County markets in which I work." Licensee also stated that the initial review appraiser "is known for disagreeing at will with other appraisers who work in the Warsaw/Benton County market."

5. Licensee appeared before the Commission during its March 23, 2013 meeting. During his appearance, Licensee answered the Commission's questions about the appraisal on the property, defended his appraisals, and provided information as to his education and experience.

6. On or about March 24, 2013, the Commission completed its final review of Licensee's appraisal of the Butterfield Trail property.

7. Licensee's Butterfield Trail Appraisal does not comply with several provisions of USPAP:

a. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-1(a) because Licensee was not aware of, did not understand and did not correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in that Licensee reported an incorrect site size with adjustments in the Direct Sales Comparison Approach that were incorrect and Licensee's value opinion was not supported.

b. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-1(b) because Licensee committed a substantial error of omission or commission that significantly affected the appraisal in that the sales were adjusted incorrectly due to the wrong site adjustment.

c. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-1(c) because Licensee rendered appraisal services in a careless or negligent manner by making a series of errors that,

in the aggregate, affected the credibility of the results in that the subject section of the appraisal was not filled out properly, the legal description was incomplete, there were no taxes reported, there was no census tract reported, there were no map references and no neighborhood defined, the zoning was incorrect and the site size was incorrect.

d. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-2(e)(i) because in developing a real property appraisal, Licensee did not identify the characteristics of the property relevant to the type and definition of value and intended use of the appraisal related to its location and physical, legal and economic attributes in that Licensee identified the property as outside the city limits when it is actually within the city limits.

e. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-3(a) because, in developing a market value opinion, Licensee did not identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic demand, the physical adaptability of the real estate and market area trends in that Licensee incorrectly reported the zoning for the property as "no zoning" when it is zoned residential.

f. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-4(a) because in utilizing the sales comparison approach to value for a credible assignment report, Licensee did not analyze comparable sales data available to indicate a value conclusion in that Licensee reported comparable sale number 3 as being in Cole Camp when it was in Lincoln City, the site adjustments were incorrect and the garage adjustments were not appropriate.

g. Licensee's Butterfield Trail appraisal did not comply with USPAP Rule 1-4(b)(i) because in completing the cost approach, Licensee did not develop an opinion of site value by an appropriate appraisal method in that Licensee did not analyze site sales and there was no discussion of the method of developing physical incurable depreciation.

h. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-4(b)(ii) because in completing the cost approach, Licensee did not analyze available comparable cost data to estimate the cost new of the improvements in that Licensee provided no data for the cost figures.

i. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-4(b)(iii) because in completing the cost approach, Licensee did not analyze available comparable data to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation) in that Licensee provided no data to the reader with information on the difference between cost new and present worth.

j. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-6(a) because in developing a real property appraisal, Licensee did not reconcile the quality and quantity of data available and analyzed within the approaches used in that Licensee did not perform a reconciliation between the Income Approach to value and the Cost Approach to value.

k. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 1-6(b) because in developing a real property appraisal, Licensee did not reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at his value conclusion in that there was no reconciliation of the approaches to value.

l. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 2-1(a) because, in reporting the results of the real property appraisal, Licensee communicated the analysis, opinion and conclusion in a misleading manner by failing to clearly and accurately set forth the appraisal in that Licensee's Butterfield Trail Appraisal contained numerous errors and omissions, as discussed above, that undermined the reliability of the report and made it misleading.

m. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule 2-1(b) because, in reporting the results of the real property appraisal, Licensee communicated the analysis, opinion and conclusion in a misleading manner by failing to contain sufficient information to enable the intended users of the appraisal to understand the report because the information was incomplete, as discussed above. The site size was incorrect and there was not sufficient information for the intended user to understand the report.

n. Licensee's Butterfield Trail Appraisal did not comply with USPAP Rule2-2(b)(viii) because the content of the summary appraisal report was not consistent with the intended use of the appraisal and did not summarize the information analyzed, the appraisal methods and

techniques employed, and the reasoning that supports the analyses, opinions and conclusions in that the Cost Approach to value was not developed properly, as discussed above.

o. Licensee's Butterfield Trail Appraisal did not comply with USPAP overall in that Licensee's value pinion was incorrect due to the error of site size and adjustments in Direct Sales Comparison Approach to value, there was no site support value provided, there were numerous errors and omissions in the subject section as discussed above, there were numerous errors and omissions in the site section of the report as discussed above, and there was no reconciliation to value.

8. Licensee's conduct, as described in paragraphs 3 through 7 above constitutes misconduct in the performance of the duties of a state licensed residential real estate appraiser for which the Commission has cause to discipline Licensee's license.

9. Licensee's conduct, as described in paragraphs 3 through 7 above constitutes failure to comply with the requirements of USPAP for which the Commission has cause to discipline Licensee's license.

10. Licensee's conduct, as described in paragraphs 3 through 7 above, constitutes violation of a professional trust or confidence for which the Commission has cause to discipline Licensee's license.

11. Cause exists for the Commission to take disciplinary action against Licensee's license under § 337.532.2(5), (7), and (14), RSMo, which states in pertinent part:

> 2. 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;
>
> ...
>
> (7) Failure to comply with the Uniform Standards of Professional Appraisal Practice promulgated by the appraisal standards board of the appraisal foundation;
>
> ...

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

Joint Agreed Disciplinary Order

12. Based upon 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, 621.045.4 and 621.110, RSMo.

13. The terms of discipline shall include that Licensee's license shall be placed on **PROBATION** for a period of two (2) years ("disciplinary period"). During Licensee's probation, Licensee shall be entitled to engage as a state licensed residential real estate appraiser under Sections 339.500 to 339.549, RSMo, provided Licensee adheres to all of the terms of this Settlement Agreement.

I. EDUCATIONAL REQUIREMENTS

A. Within six months after the effective date of this Settlement Agreement, Licensee shall submit verification to the Commission of successful completion of a fifteen hour approved qualifying education course, including examination, on report writing.

B. Licensee shall not apply the education required by this Settlement Agreement to satisfy the continuing education hours required for license renewal.

II. GENERAL REQUIREMENTS

A. During the disciplinary period, Licensee shall not sign appraisal reports as a supervising appraiser.

B. During the disciplinary period, Licensee 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, Licensee shall advise each trainee real estate appraiser working under Licensee 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.

C. Whenever during the disciplinary period Licensee provides others with a copy of Licensee's license as a Missouri state licensed real estate appraiser, Licensee shall provide the most recent version of Licensee's license issued by the Commission.

D. During the disciplinary period, Licensee shall maintain a log of all appraisal assignments completed, including appraisal values. Licensee shall submit a true and accurate copy of his log to the MREAC by no later than January 15, April 15, July 15 and October 15, during each year of the disciplinary period. Each log, except for the final log, shall be submitted within 15 days after the end of the respective six month period. Licensee shall submit the final log 30 days prior to the end of the probationary period. All logs shall comply with rule 20 CSR 2245-2.050. With the copy of the log, Licensee shall also submit a written report to the Commission stating truthfully whether there has been compliance with all terms and conditions of this Settlement Agreement. Licensee is responsible for assuring that the reports and logs are submitted to and received by the Commission.

E. During the disciplinary period, Licensee shall keep the Commission informed of Licensee's current work and home telephone numbers. Licensee shall notify the Commission in writing within ten days (10) of any change in this information.

F. During the disciplinary period, Licensee shall timely renew Licensee's license granted hereby and shall timely pay all fees required for license and comply with all other Commission requirements necessary to maintain said license in a current and active state.

G. During the disciplinary period, Licensee shall accept and comply with unannounced visits from the Commission's representatives to monitor compliance with the terms and conditions of this Agreement.

H. During the disciplinary period, Licensee shall appear in person for interviews with the Commission or its designee upon request.

I. Licensee shall submit written reports to the Commission every six (6) months during the disciplinary period stating truthfully whether there has been compliance with all terms and conditions of this Agreement. The first such report shall be received by the Commission on or before July 1, 2013.

J. Licensee shall execute any release or provide any other authorization necessary for the Commission to obtain records of Licensee's employment during the terms of the permit.

K. Licensee shall comply with all provisions of §§ 339.500 to 339.549, RSMo; all federal and state drug laws, rules, and regulations; and all federal and state criminal laws. "State" here includes the state of Missouri, all other states and territories of the United States, and the ordinances of political subdivisions of any state or territory. Licensee shall immediately report any violation of this provision to the Commission in writing. Licensee shall also immediately report any allegation that Licensee has violated this provision to the Commission, in writing. Examples of allegations of such a violation include, but are not limited to, any arrest, summons, inquiry by any law enforcement official into these topics, or inquiry into these topics by a health oversight agency. Licensee shall sign releases or other documents authorizing and requesting the holder of any closed record related to this paragraph to release such records to the Commission.

L. Licensee shall immediately submit documents showing compliance with the requirements of this Order to the Commission when requested.

M. In the event the Commission determines that Licensee has violated any term or condition of this Order, the Commission may, in its discretion, after an evidentiary hearing, suspend, revoke, or otherwise lawfully discipline Licensee's license.

N. No Order shall be entered by the Commission pursuant to the preceding paragraph of this Order without notice and an opportunity for hearing before the Commission in accordance with the provisions of Chapter 536, RSMo.

O. If, at any time during the disciplinary period, Licensee changes Licensee's address from the state of Missouri, or ceases to maintain Licensee's license current or active under the provisions of §§ 339.500 to 339.549, RSMo, or fails to keep the Commission advised of all current places of residence, the time of such absence, unlicensed or inactive status, or unknown whereabouts shall not be deemed or taken to satisfy any part of the disciplinary period.

P. Unless otherwise specified by the Commission, all reports, documentation, notices, or other materials required to be submitted to the Commission shall be forwarded to: Missouri Real Estate Appraisers Commission, P.O. Box 1335, Jefferson City, Missouri 65102.

Q. Any failure by Licensee to comply with any condition of discipline set forth herein constitutes a violation of this Order.

14. The parties to this Agreement understand that the Missouri Real Estate Appraisers Commission will maintain this Agreement as an open record of the Commission as provided in Chapters 339, 610 and 324, RSMo.

15. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided 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.

16. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

17. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of Licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: **Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101**.

18. If Licensee has requested review, Licensee and Commission jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of act and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission

determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect.

LICENSEE

Jonathan Tester

Date 5/20/13

COMMISSION

Vanessa Beauchamp
Executive Director
Missouri Real Estate Appraisers Commission

Date 5-21-13