

SETTLEMENT AGREEMENT
BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION
AND
WILLIAM H. MIESWINKEL

William H. Mieswinkel (Mieswinkel) and the Missouri Real Estate Appraisers Commission (MREAC) enter into this Settlement Agreement for the purpose of resolving the question of whether Mieswinkel's certification as a state-certified residential real estate appraiser, no. 2003026707, 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 Supp. 2011. The MREAC and Mieswinkel jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo Supp. 2011.

Mieswinkel 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 Mieswinkel 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, Mieswinkel 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.

Mieswinkel 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. Mieswinkel stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREAC that Mieswinkel's certification as a state-certified residential real estate appraiser, certificate no. 2003026707, is subject to disciplinary action by the MREAC in accordance with the relevant provisions of Chapter 621, RSMo, and §§ 339.500 through 339.549, RSMo, as amended.

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

Mieswinkel 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 Mieswinkel herein jointly stipulate to the following:

1. Section 339.535, RSMo, which requires real estate appraisers to comply with the Uniform Standards of Professional Appraisal Practice (USPAP), 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.

Appraisal Report for 1349 S Farm Road 199

2. On May 14, 2010, Mieswinkel signed an appraisal report for real property located at 1349 S Farm Road 199, Springfield, Missouri (hereinafter referred to as “Appraisal Report”). The Appraisal Report had an effective date of May 15, 2010 and valued the real property at two million, one-hundred and eighty thousand dollars (\$2,180,000).

3. The preparation of the Appraisal Report was to be prepared in compliance with the Uniform Standards of Professional Appraisal Practice, 2010-2011 edition.

4. Based on the following errors and omissions in the preparation of the Greenwood Farm Appraisal Report, Mieswinkel is in violation of Section 339.535, RSMo, the USPAP Ethics Rule, the USPAP Competency Rule, USPAP Standards 1 and 2, and USPAP Standards Rules 1-1(a), (b), and (c), 1-2(e)(i), 1-3(a), 1-4(a) and (b), 1-6(b), 2-1(a) and (b), and 2-2(b)(iii) and (viii), 2010-2011 edition:

- a. Inaccurately identifies the map reference as MLS zone as SE5 when the correct zone is SE6;
- b. Inconsistently states that the neighborhood is “25-75% Built-Up” while inaccurately stating that the neighborhood Present Land Use is “100% One-Unit. The land use is approximately 30% One-Unit and mostly agricultural land comprised of rolling hills;
- c. Inaccurately identifies the price range of One-Unit Housing as \$150,000 to \$2,000,000 with a predominant value of \$400,000, when in the prior two years it was from \$70,000 to \$940,000 with a predominant value of \$180,000;
- d. Inconsistently states that there is an oversupply in the One-Unit Housing trends, while reporting that there are only two comparable listings and three comparable sales;
- e. Inaccurately identifies the site as a rectangle when it is an irregular shape with six dimensions;

- f. Inaccurately states the zoning is R-1, Suburban Residential, when it is A-1, Agricultural;
- g. Inconsistently reports that the “subject GLA and site are an over improvement (sic)” while checking the “Yes” box indicating that the property generally conforms with the neighborhood;
- h. Inaccurately states that there are three comparable sales in the subject neighborhood within the past 12 months ranging in sale price from \$1,950,000 to \$2,950,000, when there had been no sales over \$1,000,000 in the prior 24 months;
- i. Improperly used comparable sales that were substantially superior to the subject property in design and quality;
- j. Makes the following errors in the Sales Comparison Approach with respect to Comparable Sale No. 1:
 - i. Inaccurately states the address number for Comparable Sale No. 1 as “2250” instead of 2550”;
 - ii. Undervalues the site value for Comparable Sale No. 1;
 - iii. Understates the depreciation for the subject and comparable sales, thereby making too low of an adjustment for age differences;

- iv. Inaccurately states that Comparable Sale No. 1 is nine years old when it was seven years old, and inaccurately states the subject property is 16 years old when it was 17 years old;
 - v. Incorrectly makes a positive adjustment of \$10,000 for Comparable Sale No. 1 when it should have been negative; and
 - vi. Omits many significant features of Comparable Sale No. 1 from the sales comparison grid and adjustments;
- k. Makes the following errors in the Sales Comparison Approach with respect to Comparable Sale No. 2:
- i. Incorrectly spelled the address as Catalpha; instead of Catalpa;
 - ii. No support for the \$1,000 location and age adjustments on a \$2,400,000 sale;
 - iii. The site is undervalued;
 - iv. Inaccurately reports the age of the eight year old home as eleven years;
 - v. Inaccurately describes the improvements;
 - vi. Inadequately adjusts for the comparable sales' in-ground pool and six-car detached garage; and

- vii. Omits many significant features of Comparable Sale No. 2 from the sales comparison grid and adjustments;
- l. Makes the following errors in the Sales Comparison Approach with respect to Comparable Sale No. 3:
 - i. Misspells the street name as Eaglecliff instead of Eaglescliffe;
 - ii. Inaccurately states the sale price as \$2,950,000 when it actually sold for \$2,450,000;
 - iii. No support for the \$1,000 location and age adjustments;
 - iv. Inaccurately identifies its age as 12 years when it was 10 years old;
 - v. Omits reference to the property's excellent golf course view;
 - vi. Inaccurately states the room count as 11/4/3.5, when it is actually 7/4/3.5;
 - vii. Inaccurately reports the gross living area;
 - viii. Omits many significant features of Comparable Sale No. 3 from the sales comparison grid and adjustments;
- m. Makes the following errors in the Sales Comparison Approach with respect to Listing No. 4:
 - i. Misspells the street name as Forest, instead of Forrest;

- ii. Inaccurately identifies the MLS number as #1400658, instead of the correct #1006585;
 - iii. Inaccurately identifies the style as ranch when it was a 2-story Old English style;
 - iv. The gross living area reported is inconsistent with the information provided by the sources cited in the appraisal report;
 - v. Omits many significant features of Listing No. 4 from the sales comparison grid and adjustments;
- n. Makes the following errors in the Sales Comparison Approach with respect to Listing No. 5:
- i. Inadequate support is provided for the \$2000 location adjustment;
 - ii. Inaccurately identifies the style as ranch when the listing identifies it as a Story and a Half Contemporary;
 - iii. The gross living area reported is inconsistent with the information provided by the sources cited in the appraisal report;
 - iv. Inadequately describes the extensive heating system;

- v. Omits many significant features of Listing No. 5 from the sales comparison grid and adjustments;
- o. In the Cost Approach, the following deficiencies exist:
 - i. Inaccurately states the quality rating as average, but does not use the average figures from the source materials;
 - ii. Inadequately explains why the indicated value under the sales comparison approach is higher than the cost approach when the Principle of Substitution suggests property should not sell for more than it costs to build it and given the property is reported to be over-improved with an over-supply of competing properties; and
- p. Provides no explanation for not using the Income Approach.
- q. Overstates the value of the subject property, is not credible, and is misleading.

5. Based on the facts and violations set forth above, cause exists to discipline Mieswinkel's certification as a state-certified residential real estate appraiser pursuant to § 339.532.2(5), (6), (7), (8), (9), (10), and (14), RSMo, which states:

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;

(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 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 communicating 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 MREAC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.3 and 621.110, RSMo Supp. 2011.

1. **Mieswinkel's certification is suspended, followed by a period of probation.** Mieswinkel's certification as a state-certified residential real estate appraiser is hereby SUSPENDED for a period of ONE (1) YEAR, and shall immediately thereafter be placed on PROBATION for a period of THREE (3) YEARS. The periods of suspension and probation shall constitute the "disciplinary period." During the period of suspension, Mieswinkel shall not be entitled to practice as a state-certified residential real estate appraiser pursuant to §§ 339.500 through 339.549, RSMo. During the period of probation, Mieswinkel shall be entitled to practice as a state-certified residential real estate appraiser under §§ 339.500 through 339.549, RSMo, provided Mieswinkel 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. Mieswinkel shall submit written reports to the MREAC by no later than May 1 and November 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 May 1, 2013. 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. Mieswinkel is responsible for assuring that the reports are submitted to and received by the MREAC.

B. During the disciplinary period, Mieswinkel 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 May 1 and November 1 during each year of the disciplinary period. The first log shall be submitted on or before May 1, 2013. 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. Mieswinkel is responsible for assuring that the logs are submitted to and received by the MREAC. Upon MREAC request, Mieswinkel shall submit copies of his work samples for MREAC review.

C. During the period of suspension, Mieswinkel shall not sign appraisal reports in any capacity. During the period of probation, Mieswinkel shall not sign appraisal reports as a supervising appraiser.

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

F. Mieswinkel 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, Mieswinkel 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 Mieswinkel'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. Mieswinkel 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. Mieswinkel 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, Mieswinkel 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 Mieswinkel shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that Mieswinkel 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 Mieswinkel'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 Mieswinkel 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. Mieswinkel 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 324, 339, and 610, RSMo, as amended.

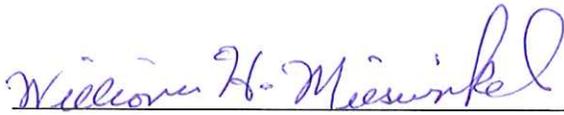
11. Mieswinkel, together with his partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREAC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from 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. Mieswinkel 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 Mieswinkel's certification. If Mieswinkel desires the Administrative Hearing Commission to review this Settlement Agreement, Mieswinkel 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 Mieswinkel 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 Mieswinkel's certification. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREAC may proceed to seek discipline against Mieswinkel as allowed by law. If Mieswinkel does not request review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREAC.

LICENSEE



William H. Mieswinkel Date

MISSOURI REAL ESTATE
APPRAISERS COMMISSION



Vanessa Beauchamp, Executive Director
Date: 11-26-12

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