

SETTLEMENT AGREEMENT BETWEEN
MISSOURI REAL ESTATE APPRAISERS COMMISSION AND ALAN BUTTRY

Come now Alan Buttry ("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 certification as a certified general real estate appraiser 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 certification, 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 a preponderance of the 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 certification. 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 certification; 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 certification, numbered

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

ra002948 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, Alan Buttry, holds a certification from the Commission as a certified general real estate appraiser, certification number 2010005635. The Commission issued Licensee's certification on February 18, 2010. Licensee's certification expires June 30, 2016. Licensee's Missouri certification was at all times relevant herein, and is now, current and active.

3. Licensee is the supervisor for general certification trainee Roger Anderson. Licensee was his supervisor throughout his training, including when Buttry completed an appraisal of CR B268 Ellsinore, Missouri.

4. On December 9, 2014, in the course of evaluating Anderson's eligibility for general certification, the Commission met with Anderson regarding his appraisal of agricultural property located at CR B268 Ellsinore, Missouri (Ellsinore Appraisal). The Commission also met with Licensee regarding the Ellsinore Appraisal because, as the supervisor, Licensee has responsibility for the Ellsinore Appraisal report.

5. On December 8, 2014, the Commission completed its review of the Ellsinore Appraisal.

6. The Ellsinore Appraisal did not comply with several provisions of the Uniform Standards of Professional Appraisal Practice (USPAP):

- a. It failed to comply with USPAP Standards Rule 1-1(a), (b) and (c) because in developing a real property appraisal, Anderson was not aware of, understood or correctly employed recognized methods and techniques necessary to produce a credible result, committed substantial errors of omission or commission that significantly affected the appraisal and rendered the services in a careless and negligent manner by making a series of errors that in the aggregate affected the credibility of the results in that the report contained numerous errors and omissions that combined to create a report that was not credible and demonstrated that Anderson did not know how to correctly develop and report an appraisal.

- b. It failed to comply with USPAP Standards Rule 1-2(e)(i), (ii) and (iii) because in developing a real property appraisal, Anderson did not identify the characteristics of the property relevant to the type and definition of value and intended use of the property including its location and physical, legal and economic attributes, the real property interest to be valued and any personal property, trade fixtures, or intangible items that are not real property but are included in the appraisal in that the report contained maps that depict the property. However, there should also be a legal description of the property. The sites comments were remedial and not adequate to allow the reader to fully understand the property. There was no discussion as to area for manure application which would be important for hog farm operation. The report did not address personal property including the equipment inside the buildings necessary for hog farm operation. Such property has a different life, value and must be defined and valued separately.
- c. It failed to comply with USPAP Standards Rule 1-2(g) because in developing a real property appraisal, Anderson did not identify any hypothetical conditions necessary in the assignment in that the report contained only one line regarding a proposed hog barn. There was no detail about the proposed improvement and no discussion to inform the client of the consequences of the condition not being fulfilled.
- d. It failed to comply with USPAP Standards Rule 1-2(h) because in developing a real property appraisal, Anderson did not determine the scope of work necessary to produce credible assignment results in accordance with the Scope of Work Rule in that the scope of work statement was canned and did not specifically address any extra steps taken to deal with a unique property in the market.
- e. It failed to comply with USPAP Standards Rule 1-3(b) because in developing a market value opinion, essential for a credible result, Anderson did not develop an opinion of the highest and best use of the real estate in that the highest and best use section contained only a recitation of the definition of the concept of highest and best use and not a true analysis to determine highest and best use. It was completely inadequate for the financially feasible analysis. Finally, the report section under "as improved" the report states there are three questions to be asked but the report does not answer them.

- f. It failed to comply with USPAP Standards Rule 1-4(a) because in developing a real property appraisal where the sales comparison approach is necessary for a credible result, Anderson did not analyze comparable sales data available to indicate a value conclusion in that the sales comparison approach was necessary, relevant and applicable. The report contained no improved comparable sales and the land sales grid contained unsupported adjustments.
- g. It failed to comply with USPAP Standards Rule 1-4(b)(i) because in developing a real property appraisal where the cost approach is necessary for a credible result, Anderson did not develop an opinion of site value by an appropriate appraisal method or technique in that the land was valued based on land sales. Anderson made adjustments but included no support for them. The lack of support and sales analysis makes the conclusion and the report less credible.
- h. It failed to comply with USPAP Standards Rule 1-4(b)(ii) because in developing a real property appraisal where the cost approach is necessary for a credible result, Anderson did not analyze available comparable cost data to estimate the cost new of any improvements in that because the property had specialized improvements and proposed construction, the cost approach was necessary. The report contained no improved sales and none were referenced as being in the work file. Accordingly, there is no market analysis in the report for depreciation to value the buildings and equipment. The report did not detail any cost new for the proposed construction of a hog barn.
- i. It failed to comply with USPAP Standards Rule 1-4(b)(iii) because in developing a real property appraisal where the cost approach is necessary for a credible result, Anderson did not analyze available comparable data to estimate the difference between the cost new and the present worth of improvements in that the report contained no sales to support depreciation. The report contributes 100% of the replacement cost new on the proposed building which is incorrect for the type of building in the area. There was no market support for Anderson's conclusion.
- j. It failed to comply with USPAP Standards Rule 1-4(c) because when developing a real property appraisal where the income approach is necessary for a credible result, Anderson did not analyze available comparable rental data and/or potential earnings capacity of the property to estimate the gross income potential of the property, did not analyze available comparable

operating expense data to estimate the operating expenses of the property, did not analyze available comparable data to estimate the rates of capitalization and/or discount and did not base projections of future rent and/or income potential and expenses on reasonably clear and appropriate evidence in that the report used data gathered from university sources to estimate income for a swine farrowing unit based on a production contract, which was not the case for that property. The estimate of production was about 25% under the industry standard and the lease rate was in excess of industry standard. The capitalization rate was from a banded method and not the market. The combination of Anderson's low production, excessive lease rate and unsupported capitalization rate create a value indication that is not credible.

- k. It failed to comply with USPAP Standards Rule 1-4(g) because in developing a real property appraisal where personal property, trade fixtures or intangible items are included in the appraisal, Anderson did not analyze the effect on value of such non-real property items in that there was an excessive amount of equipment in a swine farrowing facility that has a different life expectancy than real property in both actual and economic life. The report failed to describe and delineate the equipment and value it separately. The report included feed bins as real property when industry standard is to consider them equipment or personal property. Anderson's improper inclusion of personal property as real property created errors in the value conclusion and therefore a misleading report.
- l. It failed to comply with USPAP Standards Rule 1-6(a) because in developing a real property appraisal, Anderson did not reconcile the quality and quantity of data available and analyze it within the approaches used in that there was no discussion of the quality or quantity of data which in and of itself is very limited and inadequate in light of the presentation of only four land sales and no improved land sales.
- m. It failed to comply with USPAP Standards Rule 1-6(b) because in developing a real property appraisal, Anderson did not reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at value conclusions in that the report contains only a remedial discussion of the two approaches Anderson used but did not adequately and fully describe the relevance or credibility of each approach.

- n. It failed to comply with USPAP Standards Rule 2-1(a) because Anderson did not create a report that clearly and accurately set forth the appraisal in a manner that would not be misleading in that the report contained numerous omissions, errors and deficiencies that renders it unsupported, misleading and not credible.
- o. It failed to comply with USPAP Standards Rule 2-1(b) because Anderson did not create a report that contains sufficient information to enable the intended users of the appraisal to understand the report properly in that the report lacked sufficient information to understand the property features, function and proposed construction.
- p. It failed to comply with USPAP Standards Rule 2-1(c) because Anderson did not create a report that clearly and accurately disclosed all assumptions, extraordinary assumptions, hypothetical conditions and limiting conditions used in the report in that the report failed to describe the hypothetical condition or any consequences of the condition not being met.
- q. It failed to comply with USPAP Standards Rule 2-2(a)(iii) because Anderson's report was not consistent with the intended use because Anderson did not summarize information sufficient to identify the real estate involved in the appraisal including the physical, legal and economic property characteristics relevant to the assignment in that the report had property maps but no leave description of the property and a very limited site description.
- r. It failed to comply with USPAP Standards Rule 2-2(a)(vii) because Anderson's report was not consistent with the intended use because Anderson did not summarize the scope of work used to develop the appraisal in that the scope of work statement was brief and not specific to the unique property where there are very few comparable properties.
- s. It failed to comply with USPAP Standards Rule 2-2(a)(viii) because Anderson's report was not consistent with the intended use because Anderson did not summarize the information analyze, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions and conclusions and the report did not detail the exclusion of any approaches to value in that the report presented no comparable sales and no improved sales which would be critical for a specialized livestock facility in an area where there are none. It also failed to adequately explain why the sales comparison approach was not developed.

- t. It failed to comply with USPAP Standards Rule 2-2(a)(x) because Anderson's report was not consistent with the intended use because Anderson did not summarize, support or develop a rationale for the highest and best use in there was no development of a highest and best use analysis. The report contained only a statement or definition of highest and best use but no analysis.
 - u. It failed to comply with USPAP Standards Rule 2-2(a)(xi) because Anderson's report was not consistent with the intended use because Anderson did not clearly and conspicuously state all extraordinary assumptions and hypothetical conclusions and did not state that their use might have affected the assignment results in that the report contained one line stating there was a proposed improvement but it failed to tell the user the consequences if the hypothetical construction was not met. It resulted in a misleading report for the user as to the value and potential negative impacts.
7. Regulation 20 CSR 2245-3.005 states, in relevant part:

...

6) Training.

(A) The registrant shall be subject to direct supervision by a Missouri certified appraiser in good standing with the commission for the prior three (3) years. If the trainee is currently licensed or certified, supervision shall only be required if the trainee is completing experience outside their current scope of practice.

(B) The supervising appraiser(s) shall be responsible for the training, guidance, and direct supervision of the registrant by—

1. Accepting responsibility for the appraisal report by signing and certifying that the report complies with the *Uniform Standards of Professional Appraisal Practice* (USPAP), 2014 Edition. The USPAP, 2014 Edition, is incorporated herein by reference and can be obtained from The Appraisal Foundation, 1155 15th Street NW, Suite 1111, Washington, DC 20005, by calling (202) 347-7722, or at www.appraisalfoundation.org. This rule does not incorporate any subsequent amendments or additions to the USPAP;

2. Reviewing and signing the appraisal report(s) for which the registrant has provided appraisal services; and

3. Personally inspecting each appraised property with the registrant until the supervising appraiser determines the registrant trainee is competent, in accordance with the

competency rule of USPAP. If applying for a residential certification, the supervising appraiser shall personally inspect fifty (50) properties with the registrant, unless otherwise waived by the commission for good cause. If applying for certified general, the supervising appraiser shall personally inspect twenty (20) nonresidential properties with the registrant, unless otherwise waived by the commission for good cause.

...

(8) As used in this section, "direct supervision" shall mean, the degree of supervision required of a supervisory appraiser overseeing the work of a registrant by which the supervisory appraiser has control over and detailed professional knowledge of the work being done. Direct supervision is achieved when a registrant has regular direction, guidance, and support from a supervisory appraiser. The supervisor shall determine the level of supervision that is appropriate for the appraisal project and the skill level of the registrant as assessed by the supervisor. Direct supervision shall include but is not limited to the following:

(A) Reviewing the registrant's appraisal report(s) to ensure research of general and specific data has been adequately conducted and properly reported, application of appraisal principles and methodologies has been properly applied, that any analysis is sound and adequately reported, and that any analysis, opinions, or conclusions are adequately developed and reported so that the appraisal report is not misleading; and

(B) Reviewing the registrant's work product and discussing with the registrant any edits, corrections, or modifications that need to be made.

8. Licensee's conduct, as described in paragraphs 3 through 6 above constitutes cause to discipline Licensee's license in that Licensee provided inadequate supervision over the Ellsinore Appraisal.

9. Cause exists for the Commission to take disciplinary action against Licensee's certification under § 337.532.2(5), (7), (10) 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;

...

(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[.]

Joint Agreed Disciplinary Order

10. 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.

11. The terms of discipline shall include that Licensee's certification 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 certified general 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: 1) a fifteen hour approved qualifying education, in classroom course, including examination, on the sales comparison approach to value; and 2) a fifteen hour approved qualifying education, in classroom course, including examination, on the cost approach to value.
- 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 certification as a Missouri state certified real estate appraiser, Licensee shall provide the most recent version of Licensee's certification 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 certification granted hereby and shall timely pay all fees required for license and comply with all other Commission requirements necessary to maintain said certification 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, 2015.
- J. Licensee shall execute any release or provide any other authorization necessary for the Commission to obtain records of Licensee's employment during the disciplinary period.
- 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 certification.
- 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 certification 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.

12. 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.

13. 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.

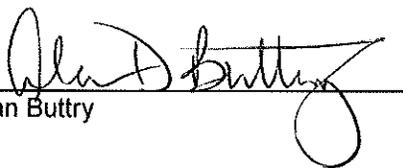
14. Licensee, together with Licensee's heirs and assigns, and Licensee's attorneys, do hereby waive, release, acquit and forever discharge the Commission, its respective members and any of its employees, agents, or attorneys, including any former Commission members, employees, agents, and attorneys, 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.

15. 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.

16. 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


Alan Buttry
Date 2-10-15

COMMISSION


Vanessa Beachamp
Executive Director
Missouri Real Estate Appraisers Commission
Date 2-17-15