

**SETTLEMENT AGREEMENT BETWEEN THE MISSOURI  
REAL ESTATE APPRAISERS COMMISSION AND MILTON L. MCDONALD**

Come now Milton L. McDonald (“McDonald”) and the Missouri Real Estate Appraisers Commission (“MREAC”) and enter into this Settlement Agreement for the purpose of resolving the question of whether McDonald’s certificate as a real estate appraiser will be subject to discipline. Pursuant to § 536.060, RSMo,<sup>1</sup> 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 2000. The MREAC and McDonald jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo 2000.

McDonald 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 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 McDonald may present

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<sup>1</sup> All citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

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, McDonald 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.

McDonald acknowledges that he has received a copy of a draft complaint that sets forth the factual allegations and legal citations raised against him. McDonald acknowledges that he has received a copy of documents relied upon by the MREAC in determining there was cause for discipline against his certificate.

McDonald acknowledges that the MREAC and its attorney followed the procedures enumerated in § 621.045, RSMo, including, but not limited to: (1) providing McDonald with a written description of the specific conduct for which discipline is sought and citations to the law and rules violated, together with copies of any documents which are the basis thereof; (2) waiting to offer a settlement proposal to McDonald until more than 30 days after providing the above-mentioned description, citation, and documents; (3) allowing McDonald at least 60 days from the date of mailing to consider the MREAC's initial settlement offer and discuss the terms of such settlement offer with the MREAC; (4) advising McDonald that he may, either at the time the Settlement Agreement is signed by all parties, or within 15 days thereafter, submit the Settlement

Agreement to the Commission for determination that the facts agreed to by the parties to the settlement constitute grounds for denying or disciplining the certificate of McDonald; and (5) advising McDonald that he has the right to consult an attorney at his own expense in any contact pursuant to § 621.045.3, RSMo, by the MREAC or its counsel.

For the purpose of settling this dispute, McDonald stipulates that the factual stipulations contained in this Settlement Agreement are true and stipulates with the MREAC that McDonald's certificate as a real estate appraiser, No. RA 001911, is subject to disciplinary action by the MREAC in accordance with the provisions of Chapter 621, RSMo, and Chapter 339, RSMo.

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

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

**I.**

**Joint Stipulation of Facts**

1. The MREAC was created and established pursuant to § 339.507, RSMo, for the purpose of executing and enforcing the provisions of §§ 339.500 through 339.549, RSMo, the Missouri Certified and Licensed Real Estate Appraisers Act.

2. McDonald is licensed by the Commission as a state-certified residential real estate appraiser, certificate no. RA 001911. McDonald's certificate is, and was at all other times relevant herein, current and active.

**Count I**  
**314 4th. St., Miller, Missouri**

3. The parties adopt and incorporate paragraphs 1 through 2 above as though fully set forth herein.

4. On or about August 10, 2000, McDonald completed and signed a Uniform Residential Appraisal Report for an existing single family residence identified in the report as "314 4th St., Miller, Missouri, 65707" ("4th St. Appraisal Report"). The effective date of the 4th St. Appraisal Report was August 10, 2000. This appraisal valued the property at \$30,000.

5. There is no property with the address of 314 4th St., Miller, Missouri, 65707.

6. In the 4th St. Appraisal Report, McDonald listed a fictitious property address instead of the true property address for the subject property.

7. In the 4th St. Appraisal Report, McDonald stated that a tenant occupied the subject property, however, McDonald did not analyze the impact of any tenant rental agreement in the 4th St. Appraisal Report.

8. McDonald stated in the 4th St. Appraisal Report that the appraisal was a "Limited Appraisal," however, McDonald did not state and support specific USPAP departures.

9. In the 4th St. Appraisal Report, McDonald stated that the subject property was held in fee simple, when in fact it was a leasehold estate. McDonald did not identify this hypothetical condition in the appraisal report.

10. In preparing the 4th St. Appraisal Report, McDonald failed to utilize an income approach. McDonald did not explain this departure from typical practice in the 4th St. Appraisal Report.

11. At the time of the 4th St. Appraisal Report, there was adequate rental data in the subject property's neighborhood for an income approach.

**Count II**  
**200 Gilmore, Miller, Missouri**

12. The parties adopt and incorporate paragraphs 1 through 11 above as though fully set forth herein.

13. On or about August 10, 2000, McDonald completed and signed a Uniform Residential Appraisal Report for an existing single family residence located at 200 Gilmore, Miller, Missouri, 65707 ("Gilmore Appraisal Report"). The effective date of the Gilmore Appraisal Report was August 10, 2000. This appraisal valued the property at \$50,000.

14. In the Gilmore Appraisal Report, McDonald stated that a tenant occupied the subject property, however, McDonald did not analyze the impact of any tenant rental agreement in the Gilmore Appraisal Report.

15. McDonald stated in the Gilmore Appraisal Report that the appraisal was a “Limited Appraisal,” however, McDonald did not state and support specific USPAP departures.

16. In the Gilmore Appraisal Report, McDonald stated that the subject property was held in fee simple, when in fact it was a leasehold estate. McDonald did not identify this hypothetical condition in the appraisal report.

17. In preparing the Gilmore Appraisal Report, McDonald failed to utilize an income approach. McDonald did not explain this departure from typical practice in the Gilmore Appraisal Report.

18. At the time of the Gilmore Appraisal Report, there was adequate rental data in the subject property’s neighborhood for an income approach.

**Count III**  
**Inconsistent Information About Comparables**

19. The parties adopt and incorporate paragraphs 1 through 18 above as though fully set forth herein.

20. In the 4th St. Appraisal Report, dated on or about August 10, 2000, McDonald used three comparable properties, including, but not limited to a property located at 502 W. 1st St., Miller, Missouri (the “Comparable at 502 W. 1st”) and a property located at 17230 LC 1777, Everton, Missouri (the “Comparable at 17230 LC 1777”).

21. On or about August 10, 2000, McDonald completed and signed a Uniform Residential Appraisal Report for an existing single family residence located at 309 4th St., Miller, Missouri, 65707 ("309 Appraisal Report").

22. On or about August 10, 2000, McDonald completed and signed a Uniform Residential Appraisal Report for an existing single family residence located at 505 Koko, Miller, Missouri, 65707 ("Koko Appraisal Report").

23. On or about August 10, 2000, McDonald completed and signed a Uniform Residential Appraisal Report for an existing single family residence located at 206 7th St., Miller, Missouri, 65707 ("7th St. Appraisal Report").

24. In the 4th St. Appraisal Report, McDonald described the Comparable at 502 W. 1st as a twenty-year old mobile home with 910 square feet, which sold in January 2000 for \$42,000.

25. In the 309 Appraisal Report, McDonald described the Comparable at 502 W. 1st as a seventy-five-year old bungalow with 1,050 square feet, which sold in January 2000 for \$30,000.

26. In the 4th St. Appraisal Report, McDonald described the Comparable at 17230 LC 1777 as a 10-year old mobile home with 910 square feet and five total rooms, which comparable was located in Everton, Missouri.

27. In the Koko Appraisal Report, McDonald described the Comparable at 17230 LC 1777 as an 8-year old double-wide with 1,220 square feet and six total rooms, which comparable was located in Miller, Missouri.

28. In the Gilmore Appraisal Report, dated on or about August 10, 2000, McDonald used three comparable properties, including a property located at 602 Sanders, Millers, Missouri (the "Comparable at 602 Sanders"); a property located at 408 Adamson, Miller, Missouri (the "Comparable at 408 Adamson"); and a property located at 316 DD Highway, Miller, Missouri (the "Comparable at 316 DD Highway").

29. In the Gilmore Appraisal Report, McDonald described the Comparable at 602 Sanders as a bungalow with 1,240 square feet and four bedrooms, which comparable sold in April 2000 for \$42,200.

30. In the 309 Appraisal Report, McDonald described the Comparable at 602 Sanders as a bungalow with 1,220 square feet and three bedrooms, which comparable sold in April 2000 for \$42,000.

31. In the Gilmore Appraisal Report, McDonald described the Comparable at 408 Adamson as having no garage.

32. In the 309 Appraisal Report, McDonald described the Comparable at 408 Adamson as having a 1-car, attached garage.

33. In the Gilmore Appraisal Report, McDonald described the Comparable at 316 DD Highway as having no garage.

34. In the Gilmore Appraisal Report, McDonald described the Comparable at 316 DD Highway as having a 2-car, attached garage.

**Joint Conclusions of Law**

35. Jurisdiction and venue are proper before the Administrative Hearing

Commission pursuant to §§ 621.045 and 339.532.2, RSMo.

36. Section 339.532.2, RSMo, provides 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 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[.]

37. Section 339.535, RSMo, provides:

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.

38. Uniform Standards of Professional Appraisal Practice<sup>2</sup> (“USPAP”) Ethics Rule regarding Conduct provides:

An appraiser must perform assignments ethically and competently in accordance with these standards and must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report[.]

39. USPAP Departure Rule provides:

This rule permits exceptions from sections of the Uniform Standards that are classified as specific requirements rather than binding requirements. The burden of proof is on the appraiser to decide before accepting an assignment and invoking this rule that the scope of work applied will result in opinions or conclusions that are credible. The burden of disclosure is also

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<sup>2</sup> All references in this Settlement Agreement to USPAP are to the 2000 edition of the Uniform Standards of Professional Appraisal Practice.

on the appraiser to report any departures from specific requirements.

An appraiser may enter into an agreement to perform an assignment in which the scope of work is less than, or different from, the work that would otherwise be required by specific requirements, provided that prior to entering into such an agreement:

1. the appraiser has determined that the appraisal or consulting process to be performed is not so limited that the results of the assignment are no longer credible;
2. the appraiser has advised the client that the assignment calls for something less than, or different from, the work required by the specific requirements and that the report will clearly identify and explain the departure(s); and
3. the client has agreed that the performance of a limited appraisal or consulting service would be appropriate, given the intended use.

9. Pertinent USPAP Definitions are as follows:

**ASSUMPTION:** that which is taken to be true.

\* \* \* \* \*

**BINDING REQUIREMENTS:** all or part of a Standards Rule of USPAP from which departure is not permitted. (See DEPARTURE RULE.)

\* \* \* \* \*

**EXTRAORDINARY ASSUMPTION:** an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions.

\* \* \* \* \*

**HYPOTHETICAL CONDITION:** that which is contrary to what exists, but is supposed for the purpose of analysis.

\* \* \* \* \*

**SPECIFIC REQUIREMENTS:** all or part of a Standards Rule of USPAP from which departure is permitted under certain limited conditions. (See DEPARTURE RULE)

12. USPAP Standard 1 provides:

In developing a real property appraisal, an appraiser must identify the problem to be solved and the scope of work necessary to solve the problem, and correctly complete research and analysis necessary to produce a credible appraisal.

13. USPAP Standards Rule (“SR”) 1-1, which contains binding requirements from which departure is not permitted, provides:

In developing a real property appraisal, an appraiser must:

- (a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;
- (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and
- (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affect the credibility of those results.

14. USPAP SR 1-2, which contains binding requirements from which departure is not permitted, provides, in part:

In developing a real property appraisal, an appraiser must:

\* \* \* \* \*

(e) identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal, including:

(i) its location and physical, legal, and economic attributes;

\* \* \* \* \*

(iv) any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, declarations, special assessments, ordinances, or other items of a similar nature; and

\* \* \* \* \*

(f) identify the scope of work necessary to complete the assignment;

\* \* \* \* \*

(h) identify any hypothetical conditions necessary in the assignment.

15. USPAP SR 1-4, which contains specific requirements from which departure is permitted, provides, in part:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information applicable to the appraisal problem, given the scope of work identified in accordance with Standards Rule 1-2(f).

\* \* \* \* \*

(c) When an income approach is applicable, an appraiser must:

(i) analyze such comparable rental data as are available to estimate the market rental of the property;

(ii) analyze such comparable operating expense data as are available to estimate the operating expenses of the property;

(iii) analyze such comparable data as are available to estimate rates of capitalization and/or rates of discount; and

(iv) base projections of future rent and expenses on reasonably clear and appropriate evidence.

16. USPAP Standard 2 provides:

In reporting the results of a real property appraisal, an appraiser must communicate each analysis, opinion, and conclusion in a manner that is not misleading.

17. USPAP SR 2-1, which contains binding requirements from which departure is not permitted, provides:

Each written or oral real property appraisal report must:

(a) clearly and accurately set forth the appraisal in a manner that will not be misleading;

(b) contain sufficient information to enable the intended users of the appraisal to understand the report properly.

(c) clearly and accurately disclose any extraordinary assumption, hypothetical condition, or limiting condition that directly affects the appraisal and indicate its impact on value.

18. USPAP SR 2-2, which contains binding requirements from which departure is not permitted, provides, in part:

Each written real property appraisal report must be prepared under one of the following three options and prominently state which option is used: Self-Contained Appraisal Report, Summary Appraisal Report, or Restricted Use Appraisal Report.

\* \* \* \* \*

(b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:

\* \* \* \* \*

(iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment.

\* \* \* \* \*

(viii) state all assumptions, hypothetical conditions, and limiting conditions that affected the analyses, opinions, and conclusions;

\* \* \* \* \*

(xi) state and explain any permitted departures from specific requirements of STANDARD 1, and the reason for excluding any of the usual valuation approaches[.]

**Count I**  
**314 4th. St., Miller, Missouri**

19. By listing a fictitious property address instead of the true property address for the subject property in the 4th St. Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(e)(i), in that McDonald failed to identify the location of the subject property, thereby failing to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal.

20. By not analyzing the impact of any tenant rental agreement in the 4th St. Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(e)(i), in that McDonald failed to identify the economic attributes of the subject property, thereby failed to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal.

21. By not analyzing the impact of any tenant rental agreement in the 4th St. Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(e)(iv), in that McDonald failed to identify any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, or other items of a similar nature, and thereby failed to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal.

22. By not analyzing the impact of any tenant rental agreement in the 4th St. Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-4(c)(i), in that McDonald failed to analyze such comparable rental data as are available to estimate the market rental of the property.

23. By not analyzing the impact of any tenant rental agreement in the 4th St. Appraisal Report, McDonald violated USPAP Standard 2 and SR 2-2(b)(iii), in that McDonald failed to summarize information sufficient to identify the real estate involved in the appraisal, including the economic property characteristics relevant to the assignment.

24. By failing to state and support specific USPAP departures in the 4th St. Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(f), in that McDonald failed to identify the scope of the work necessary to complete the assignment.

25. By failing to state and support specific USPAP departures in the 4th St. Appraisal Report, McDonald violated USPAP Standard 2 and SR 2-1(c), in that McDonald failed to clearly and accurately disclose any extraordinary assumption, hypothetical condition, and limiting condition that directly affected the appraisal and indicate its impact on value.

26. By failing to identify the hypothetical condition in the 4th St. Appraisal Report regarding the stated fee simple status, McDonald violated USPAP Standard 1 and SR 1-2(h).

27. By failing to identify the hypothetical condition in the 4th St. Appraisal Report regarding the stated fee simple status, McDonald violated USPAP Standard 2 and SR 2-2(b)(viii).

28. By failing to use an income approach to analyze the subject property in the 4th St. Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(i), in that McDonald failed to analyze such comparable rental data as are available to estimate the market rental of the property.

29. By failing to use an income approach to analyze the subject property in the 4th St. Appraisal Report, or to adequately explain this departure from typical practice,

McDonald violated USPAP Standard 1 and SR 1-4(c)(ii), in that McDonald failed to analyze such comparable operating expense data as are available to estimate the operating expenses of the property.

30. By failing to use an income approach to analyze the subject property in the 4th St. Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(iii), in that McDonald failed to analyze such comparable data as are available to estimate the rates of capitalization and rates of discount.

31. By failing to use an income approach to analyze the subject property in the 4th St. Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(iv), in that McDonald failed to base projections of future rent and expenses on reasonably clear and appropriate evidence.

32. By failing to use an income approach to analyze the subject property in the 4th St. Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated the USPAP Departure Rule, Standard 2, and SR 2-2(b)(xi), in that McDonald failed to state and explain any permitted departures from specific requirements of Standard 1 and the reason for excluding any of the usual valuation approaches.

33. Based on McDonald's errors and omissions in preparing the 4th St. Appraisal Report, McDonald failed to be aware of, understand, and correctly employ

those recognized methods and techniques that are necessary to produce a credible appraisal and violated USPAP Standard 1 and SR 1-1(a).

34. Based on each of McDonald's errors and omissions in preparing the 4th St. Appraisal Report, McDonald committed a substantial error of omission and commission that significantly affected the appraisal and violated USPAP Standard 1 and SR 1-1(b).

35. Based on McDonald's errors and omissions in preparing the 4th St. Appraisal Report, McDonald rendered appraisal services in a careless and negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affect the credibility of those results, and violated of USPAP Standard 1 and SR 1-1(c).

36. Based on McDonald's errors and omissions in preparing the 4th St. Appraisal Report, McDonald failed to clearly and accurately set forth the appraisal in a manner that will not be misleading, and violated of USPAP Standard 2 and SR 2-1(a).

37. Based on McDonald's errors and omissions in preparing the 4th St. Appraisal Report, McDonald failed to issue a report containing sufficient information to enable the intended users of the appraisal to understand the report properly, and violated of USPAP Standard 2 and SR 2-1(b).

38. Based on McDonald's errors and omissions in preparing the 4th St. Appraisal Report, McDonald communicated results in a misleading and fraudulent manner, in violation of the USPAP Ethics Rule.

39. Each of McDonald's USPAP violations in the preparation of the 4th St. Appraisal Report constitute a violation of § 339.535, RSMo.

40. McDonald's conduct in the preparation of the 4th St. Appraisal Report demonstrates incompetency, misconduct, gross negligence, dishonesty, fraud, and misrepresentation in the performance of the functions and duties of a certified real estate appraiser, providing cause to discipline his certificate pursuant to § 339.532.2(5), RSMo.

41. McDonald's conduct in the preparation of the 4th St. Appraisal Report was a violation of the standards for the development and communication of real estate appraisals, providing cause to discipline his certificate pursuant to § 339.532.2(6), RSMo.

42. In preparing and signing the 4th St. Appraisal Report, McDonald failed to comply with the USPAP, providing cause to discipline his certificate pursuant to § 339.532.2(7), RSMo.

43. In preparing and signing the 4th St. Appraisal Report, McDonald failed and refused without good cause to exercise reasonable diligence in developing the appraisal, preparing the appraisal report, and communicating the appraisal, providing cause to discipline his certificate pursuant to § 339.532.2(8), RSMo.

44. McDonald's conduct in the preparation and signing of the 4th St. Appraisal Report demonstrates negligence and incompetence in developing the appraisal, in preparing the appraisal report, and in communicating the appraisal, providing cause to discipline his certificate pursuant to § 339.532.2(9), RSMo.

45. McDonald's conduct in the preparation and signing of the 4th St. Appraisal Report violated and willfully disregarded the provisions of §§ 339.500 to 339.549, RSMo, and the regulations of the MREAC for the administration and enforcement of the provisions of §§ 339.500 to 339.549, RSMo, providing cause to discipline his certificate pursuant to § 339.532.2(10), RSMo.

46. McDonald's conduct in the preparation and signing of the 4th St. Appraisal Report violated the professional trust and confidence he owed to the MREAC, the public, and to clients, providing cause to discipline his certificate pursuant to § 339.532.2(14) RSMo.

47. McDonald's conduct in the preparation and signing of the 4th St. Appraisal Report demonstrates that McDonald rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Departure Rule, USPAP Standards 1 and 2, USPAP SR 1-1, 1-2, 1-4, 2-1, and 2-2, and § 339.535, RSMo, providing cause to discipline McDonald's certificate as a real estate appraiser pursuant to § 339.532.2 (5), (6), (7), (8), (9), (10), and (14), RSMo.

**Count II**  
**200 Gilmore, Miller, Missouri**

48. By not analyzing the impact of any tenant rental agreement in the Gilmore Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(e)(i), in that McDonald failed to identify the economic attributes of the subject property and thereby failed to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal.

49. By not analyzing the impact of any tenant rental agreement in the Gilmore Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(e)(iv), in that McDonald failed to identify any known easements, restrictions, encumbrances, leases, reservations, covenants, contracts, and other items of a similar nature, and thereby failed to identify the characteristics of the property that are relevant to the purpose and intended use of the appraisal.

50. By not analyzing the impact of any tenant rental agreement in the Gilmore Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-4(c)(i), in that McDonald failed to analyze such comparable rental data as are available to estimate the market rental of the property.

51. By not analyzing the impact of any tenant rental agreement in the Gilmore Appraisal Report, McDonald violated USPAP Standard 2 and SR 2-2(b)(iii), in that McDonald failed to summarize information sufficient to identify the real estate involved in the appraisal, including the economic property characteristics relevant to the assignment.

52. By failing to state and support specific USPAP departures in the Gilmore Appraisal Report, McDonald violated USPAP Standard 1 and SR 1-2(f), in that McDonald failed to identify the scope of the work necessary to complete the assignment.

53. By failing to state and support specific USPAP departures in the Gilmore Appraisal Report, McDonald violated USPAP Standard 2 and SR 2-1(c), in that McDonald failed to clearly and accurately disclose any extraordinary assumption,

hypothetical condition, and limiting condition that directly affected the appraisal and indicate its impact on value.

54. By failing to identify the hypothetical condition in the Gilmore Appraisal Report regarding the stated fee simple status, McDonald violated USPAP Standard 1 and SR 1-2(h).

55. By failing to identify the hypothetical condition in the Gilmore Appraisal Report regarding the stated fee simple status, McDonald violated USPAP Standard 2 and SR 2-2(b)(viii).

56. By failing to use an income approach to analyze the subject property in the Gilmore Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(i), in that McDonald failed to analyze such comparable rental data as are available to estimate the market rental of the property.

57. By failing to use an income approach to analyze the subject property in the Gilmore Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(ii), in that McDonald failed to analyze such comparable operating expense data as are available to estimate the operating expenses of the property.

58. By failing to use an income approach to analyze the subject property in the Gilmore Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(iii), in that McDonald failed to

analyze such comparable data as are available to estimate the rates of capitalization and rates of discount.

59. By failing to use an income approach to analyze the subject property in the Gilmore Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated USPAP Standard 1 and SR 1-4(c)(iv), in that McDonald failed to base projections of future rent and expenses on reasonably clear and appropriate evidence.

60. By failing to use an income approach to analyze the subject property in the Gilmore Appraisal Report, or to adequately explain this departure from typical practice, McDonald violated the USPAP Departure Rule, Standard 2, and SR 2-2(b)(xi), in that McDonald failed to state and explain any permitted departures from specific requirements of Standard 1 and the reason for excluding any of the usual valuation approaches.

61. Based on McDonald's errors and omissions in preparing the Gilmore Appraisal Report, McDonald failed to be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and violated USPAP Standard 1 and SR 1-1(a).

62. Based on each of McDonald's errors and omissions in preparing the Gilmore Appraisal Report, McDonald committed a substantial error of omission and commission that significantly affected the appraisal and violated USPAP Standard 1 and SR 1-1(b).

63. Based on McDonald's errors and omissions in preparing the Gilmore Appraisal Report, McDonald rendered appraisal services in a careless and negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affect the credibility of those results, and violated USPAP Standard 1 and SR 1-1(c).

64. Based on McDonald's errors and omissions in preparing the Gilmore Appraisal Report, McDonald failed to clearly and accurately set forth the appraisal in a manner that will not be misleading, and violated USPAP Standard 2 and SR 2-1(a).

65. Based on McDonald's errors and omissions in preparing the Gilmore Appraisal Report, McDonald failed to issue a report containing sufficient information to enable the intended users of the appraisal to understand the report properly, and violated of USPAP Standard 2 and SR 2-1(b).

66. Based on McDonald's errors and omissions in preparing the Gilmore Appraisal Report, McDonald communicated results in a misleading and fraudulent manner, in violation of the USPAP Ethics Rule.

67. Each of McDonald's USPAP violations in preparing the Gilmore Appraisal Report constitute a violation of § 339.535, RSMo.

68. McDonald's conduct in the preparation of the Gilmore Appraisal Report demonstrates incompetency, misconduct, gross negligence, dishonesty, fraud, and misrepresentation in the performance of the functions and duties of a certified real estate appraiser, providing cause to discipline his certificate pursuant to § 339.532.2(5), RSMo.

69. McDonald's conduct in the preparation of the Gilmore Appraisal Report was a violation of the standards for the development and communication of real estate appraisals, providing cause to discipline his certificate pursuant to § 339.532.2(6), RSMo.

70. In preparing and signing the Gilmore Appraisal Report, McDonald failed to comply with the USPAP, providing cause to discipline his certificate pursuant to § 339.532.2(7), RSMo.

71. In preparing and signing the Gilmore Appraisal Report, McDonald failed and refused without good cause to exercise reasonable diligence in developing the appraisal, preparing the appraisal report, and communicating the appraisal, providing cause to discipline his certificate pursuant to § 339.532.2(8), RSMo.

72. McDonald's conduct in the preparation and signing of the Gilmore Appraisal Report demonstrates negligence and incompetence in developing the appraisal, in preparing the appraisal report, and in communicating the appraisal, providing cause to discipline his certificate pursuant to § 339.532.2(9), RSMo.

73. McDonald's conduct in the preparation and signing of the Gilmore Appraisal Report violated and willfully disregarded the provisions of §§ 339.500 to 339.549, RSMo, and the regulations of the MREAC for the administration and enforcement of the provisions of §§ 339.500 to 339.549, RSMo, providing cause to discipline his certificate pursuant to § 339.532.2(10), RSMo.

74. McDonald's conduct in the preparation and signing of the Gilmore Appraisal Report violated the professional trust and confidence he owed to the MREAC,

the public, and to clients, providing cause to discipline his certificate pursuant to § 339.532.2(14) RSMo.

75. McDonald's conduct in the preparation and signing of the Gilmore Appraisal Report demonstrates that McDonald rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Departure Rule, USPAP Standards 1 and 2, USPAP SR 1-1, 1-2, 1-4, 2-1, and 2-2, and § 339.535, RSMo, providing cause to discipline McDonald's certificate as a real estate appraiser pursuant to § 339.532.2 (5), (6), (7), (8), (9), (10), and (14), RSMo.

**Count III**  
**Inconsistent Information About Comparables**

76. By providing inconsistent information about comparable properties in his appraisals, McDonald committed substantial errors of omission and commission that significantly affected the appraisals and violated USPAP Standard 1 and SR 1-1(b).

77. By providing inconsistent information about comparable properties in his appraisals, McDonald rendered appraisal services in a careless and negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of each appraisal, in the aggregate affect the credibility of those results, and violated USPAP Standard 1 and SR 1-1(c).

78. By providing inconsistent information about comparable properties in his appraisals, McDonald failed to clearly and accurately set forth the appraisals in a manner that will not be misleading, and violated USPAP Standard 2 and SR 2-1(a).

79. By providing inconsistent information about comparable properties in his appraisals, McDonald failed to issue a report containing sufficient information to enable the intended users of the appraisals to understand the report properly, and violated USPAP Standard 2 and SR 2-1(b).

80. By providing inconsistent information about comparable properties in his appraisals, McDonald communicated results in a misleading and fraudulent manner, in violation of the USPAP Ethics Rule.

81. Each of McDonald's USPAP violations in providing inconsistent information about comparable properties in McDonald's appraisals constitute a violation of § 339.535, RSMo.

82. By providing inconsistent information about comparable properties in his appraisals, McDonald demonstrated incompetency, misconduct, gross negligence, dishonesty, fraud, and misrepresentation in the performance of the functions and duties of a certified real estate appraiser, providing cause to discipline his certificate pursuant to § 339.532.2(5), RSMo.

83. By providing inconsistent information about comparable properties in his appraisals, McDonald violated the standards for the development and communication of real estate appraisals, providing cause to discipline his certificate pursuant to § 339.532.2(6), RSMo.

84. By providing inconsistent information about comparable properties in his appraisals, McDonald failed to comply with the USPAP, providing cause to discipline his certificate pursuant to § 339.532.2(7), RSMo.

85. By providing inconsistent information about comparable properties in his appraisals, McDonald failed and refused without good cause to exercise reasonable diligence in developing the appraisals, preparing the appraisal reports, and communicating the appraisals, providing cause to discipline his certificate pursuant to § 339.532.2(8), RSMo.

86. By providing inconsistent information about comparable properties in his appraisals, McDonald demonstrated negligence and incompetence in developing the appraisals, in preparing the appraisal reports, and in communicating the appraisals providing cause to discipline his certificate pursuant to § 339.532.2(9), RSMo.

87. By providing inconsistent information about comparable properties in his appraisals, McDonald violated and willfully disregarded the provisions of §§ 339.500 to 339.549, RSMo, and the regulations of the MREAC for the administration and enforcement of the provisions of §§ 339.500 to 339.549, RSMo, providing cause to discipline his certificate pursuant to § 339.532.2(10), RSMo.

88. By providing inconsistent information about comparable properties in his appraisals, McDonald violated the professional trust and confidence he owed to the MREAC, the public, and to clients, providing cause to discipline his certificate pursuant to § 339.532.2(14) RSMo.

89. McDonald's conduct in providing inconsistent information about comparable properties in his appraisals demonstrates that McDonald rendered appraisal services in violation of the USPAP Ethics Rule, USPAP Departure Rule, USPAP Standards 1 and 2, USPAP SR 1-1, 1-2, and 2-1, and § 339.535, RSMo, providing cause to discipline McDonald's certificate as a real estate appraiser pursuant to § 339.532.2 (5), (6), (7), (8), (9), (10), and (14) RSMo.

## 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, 621.045.3, and 621.110, RSMo.

1. **McDonald's certificate is on probation.** McDonald's certificate as a real estate appraiser is hereby placed on PROBATION for a period of TWO (2) YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, McDonald shall be entitled to practice as a real estate appraiser under Chapter 339, RSMo, provided McDonald 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. McDonald shall submit written reports to the MREAC by no later than January 1 and July 1, during each year of the disciplinary period stating truthfully whether there has been compliance with all terms and

conditions of this Joint Stipulation. McDonald is responsible for assuring that the reports are submitted to and received by the MREAC.

B. With the written reports required under subparagraph A, above, McDonald shall submit to the MREAC for review a copy of his appraisal assignment log for the preceding six months of the disciplinary period. Upon the MREAC's request, McDonald shall submit copies of his work samples.

C. Within six (6) months after the effective date of this Settlement Agreement, McDonald shall submit verification to the MREAC of his successful completion of the following approved courses, including examination: 15-hour USPAP and 30-hour Sales Comparison.

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

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

F. During the disciplinary period, McDonald 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.

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

H. If, at any time within the disciplinary period, McDonald 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 certificate of McDonald shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREAC determines that McDonald has violated any term or condition of this Settlement Agreement, the MREAC may, in its discretion, vacate and set aside the discipline imposed herein and may impose such further discipline as it shall deem appropriate.

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. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the MREAC may choose to conduct a hearing before it to determine whether a violation occurred and may impose further discipline.

5. This Settlement Agreement does not bind the MREAC or restrict the remedies available to it concerning any future violations by McDonald 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 discipline. McDonald 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 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 620, RSMo, as amended.

11. McDonald, together with his partners, shareholders, officers, directors, 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 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.

**MCDONALD AS EVIDENCED BY THE INITIALS ON THE  
APPROPRIATE LINE**

\_\_\_\_\_ REQUESTS

  *MM*   DOES NOT REQUEST

**THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE  
FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING  
MCDONALD'S CERTIFICATE AS A REAL ESTATE APPRAISER.**

If McDonald has requested review, McDonald and the MREAC jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining McDonald's certificate and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining McDonald's certificate. Effective the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining McDonald's certificate, the agreed upon discipline set forth herein shall go into effect.

If McDonald has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director.

CERTIFICATE HOLDER

  *M L McDonald*   3-28-05  
Milton L. McDonald                      Date

MISSOURI REAL ESTATE  
APPRAISERS COMMISSION

  *Rodger L. Fitzwater*    
Rodger Fitzwater, Executive Director

Date:   4/5/05

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