KAMALA D. HARRIS
Attorney General of California
JAMES M. LEDAKIS
Supervising Deputy Attorney General
MARICHELLE S. TAHIMIC
Deputy Attorney General
State Bar No. 147392
110 West "A" Street, Suite 1100
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-3154
Facsimile: (619) 645-2061
Attorneys for Complainant

BEFORE THE
BUREAU OF REAL ESTATE APPRAISERS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **RAYMOND DOZIER** **73-350 El Paseo, Suite 206** **Palm Desert, CA 92260** **Real Estate Appraiser License No. 004590** Respondent.	Case No. C 090109-03 **A C C U S A T I O N**

Complainant alleges:

PARTIES

1. Elizabeth Seaters, acting on behalf of the Bureau of Real Estate Appraisers (Complainant), brings this Accusation solely in her official capacity as Chief of Enforcement for Complainant.

2. On or about April 21, 1992, the Bureau of Real Estate Appraisers issued Real Estate Appraiser License Number 004590 to Raymond Dozier (Respondent). The Real Estate Appraiser License was in full force and effect at all times relevant to the charges brought herein and will expire on November 27, 2014, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Chief of the Bureau of Real Estate Appraisers, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Business and Professions Code section 11302 states:

> For the purpose of applying this part, the following terms, unless otherwise expressly indicated, shall mean and have the following definitions:
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> . . .
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> (g) "Director" or "chief" means the Chief of the Bureau of Real Estate Appraisers.
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> . . . .

5. Business and Professions Code section 11313 states:

> The bureau is under the supervision and control of the Director of Consumer Affairs. The duty of enforcing and administering this part is vested in the chief, and he or she is responsible to the Director of Consumer Affairs therefor. The chief shall adopt and enforce rules and regulations as are determined reasonably necessary to carry out the purposes of this part. Those rules and regulations shall be adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Regulations adopted by the former Director of the Office of Real Estate Appraisers shall continue to apply to the bureau and its licensees.

6. Business and Professions Code section 11314 states, in pertinent part: "The office is required to include in its regulations requirements for licensure and discipline of real estate appraisers that ensure protection of the public interest."

7. Business and Professions Code section 11316, subdivision (a) states:

> (a) The director may assess a fine against a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation for violation of this part or any regulations adopted to carry out its purposes.

8. Title 10, California Code of Regulations, section 3721 states:

> (a) The Director may issue a citation, order of abatement, assess a fine or private or public reproval, suspend or revoke any license or Certificate of Registration, and/or may deny the issuance or renewal of a license or Certificate of Registration of any person or entity acting in a capacity requiring a license or Certificate of Registration who has:
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> . . .

(6) Violated any provision of USPAP;

(b) Before issuing any private or public reproval or denying, suspending, or revoking any license or Certificate of Registration issued or issuable under the provisions of the Real Estate Appraisers Licensing and Certification Law or these regulations, the Office shall proceed as prescribed by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code (the Administrative Procedure Act) and the Office shall have all the powers granted therein.

. . . .

9. Business and Professions Code section 11315.3 states:

The suspension, expiration, or forfeiture by operation of law of a license or certificate of registration issued by the office, or its suspension, forfeiture, or cancellation by order of the office or by order of a court of law, or its surrender without the written consent of the office, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the office of its authority to institute or continue a disciplinary proceeding against the licensee or registrant upon any ground provided by law or to enter an order suspending or revoking the license or certificate of registration, or otherwise taking disciplinary action against the licensee or registrant on any such ground.

STATUTORY AND REGULATORY PROVISIONS

10. Business and Professions Code section 11319 states:

Notwithstanding any other provision of this code, the Uniform Standards of Professional Appraisal Practice constitute the minimum standard of conduct and performance for a licensee in any work or service performed that is addressed by those standards. If a licensee also is certified by the Board of Equalization, he or she shall follow the standards established by the Board of Equalization when fulfilling his or her responsibilities for assessment purposes.

11. Title 10, California Code of Regulations, section 3500(b)(19) states that "Uniform Standards of Professional Appraisal Practice (USPAP)" means those standards as adopted by the Appraisal Standards Board of the Appraisal Foundation.

12. Title 10, California Code of Regulations, section 3701 states:

Every holder of a license under this part shall conform to and observe the Uniform Standards of Professional Appraisal Practice (USPAP) and any subsequent amendments thereto as promulgated by the Appraisal Standards Board of The Appraisal Foundation which standards are herein incorporated into these regulations by reference as if fully set forth herein.

13. Title 10, California Code of Regulations section 3702 states that:

(a) The Director finds and declares as follows:

(1) That the profession of real estate appraisal is vested with a

fiduciary relationship of trust and confidence as to clients, lending institutions, and both public and private guarantors or insurers of funds in federally-related real estate transactions and that the qualifications of honesty, candor, integrity, and trustworthiness are directly and substantially related to and indispensable to the practice of the appraisal profession;

. . .

(3) Every holder of a license to practice real estate appraisal, Registrant, Controlling Person of an Appraisal Management Company, or person or entity acting in a capacity requiring a license or Certificate of Registration shall be required to demonstrate by his or her conduct that he or she possesses the qualifications of honesty, candor, integrity, and trustworthiness.

. . . .

14. Title 10, California Code of Regulations, section 3705, states:

(a) Every appraisal report subject to the Uniform Standards of Professional Appraisal Practice upon final completion shall bear the signature and license number of the appraiser and of the supervising appraiser, if appropriate. The affixing of such signature and number constitute the acceptance by the appraiser and supervising appraiser of full and personal responsibility for the accuracy, content, and integrity of the appraisal under Standards Rules 1 and 2 of USPAP.

. . . .

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

EFFECTIVE JANUARY 1, 2005 – DECEMBER 31, 2005

Applicable to the Seventh Cause for Discipline[1]

15. USPAP Standards Rule 1-1 states:

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;

. . . .

16. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

[1] USPAP is periodically revised: appraisers are responsible for adherence to the edition of USPAP in effect as of the date of preparation of the appraisal report.

. . .

(e) identify the characteristics of the property that are relevant to the type and definition of value 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; ...

17. USPAP Standards Rule 1-3 states:

When the value opinion to be developed is market value, and given the scope of work identified in accordance with Standards Rule 1-2(f), an appraiser must:

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and

(b) develop an opinion of the highest and best use of the real estate.

18. USPAP Standards Rule 1-4 states:

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).

(a) When a sales comparison approach is applicable, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

. . . .

19. USPAP Standards Rule 1-5 states:

In developing a real property appraisal, when the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

(a) analyze all agreements of sale, options, or listings of the subject property current as of the effective date of the appraisal; and

(b) analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.

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20. USPAP Standards Rule 2-1 states:

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;

. . . .

21. USPAP Standards Rule 2-2 states:

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;

. . .

(vii) summarize sufficient information to disclose to the client and any intended uses of the appraisal the scope of work used to develop the appraisal;

. . .

(ix) summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;

(x) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when reporting an opinion of market value, summarize the support and rationale for the appraiser's opinion of the highest and best use of the real estate;

. . . .

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22. The USPAP Ethics Rule states:

> To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first three sections apply to all appraisal practice, and all four sections apply to appraisal practice performed under STANDARDS 1 through 10.
>
> Compliance with USPAP is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.
>
> An appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice.
>
> Conduct:
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> An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.
>
> In appraisal practice, an appraiser must not perform as an advocate for any party or issue.
>
> 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.
>
> An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.
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UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

EFFECTIVE JULY 1, 2006 – DECEMBER 31, 2007

Applicable to the First, Fifth and Eighth Causes for Discipline

23. USPAP Standards Rule 1-1 states:

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;

. . . .

24. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

. . .

(e) identify the characteristics of the property that are relevant to the type and definition of value and intended use of the appraisal,10 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 any extraordinary assumptions necessary in the assignment;

. . .

(h) determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.

25. USPAP Standards Rule 1-3 states:

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and,

(b) develop an opinion of the highest and best use of the real estate.

26. USPAP Standards Rule 1-4 states:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

(a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

(b) When a cost approach is necessary for credible assignment results, an appraiser must:

(i) develop an opinion of site value by an appropriate appraisal method or technique;

(ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and,

(iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

(c) When an income approach is necessary for credible assignment results, an appraiser must:

(i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential of the property;

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

. . .

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

. . .

(e) When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.

. . .

(g) When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.

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27. USPAP Standards Rule 1-5 states:

When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:

. . .

(b) analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.

28. USPAP Standards Rule 1-6 states:

In developing a real property appraisal, an appraiser must:

(a) reconcile the quality and quantity of data available and analyzed within the approaches used; and,

(b) reconcile the applicability or suitability of the approaches used to arrive at the value conclusion(s).

29. USPAP Standards Rule 2-1 states:

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;

. . . .

30. USPAP Standards Rule 2-2 states:

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;

. . .

(vii) summarize the scope of work used to develop the appraisal;

(viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;

(ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;

(x) clearly and conspicuously:

state all extraordinary assumptions and hypothetical conditions; and state that their use might have affected the assignment results; and

. . . .

31. The USPAP Ethics Rule states:

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first three sections apply to all appraisal practice, and all four sections apply to appraisal practice performed under STANDARDS 1 through 10.

Compliance with USPAP is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

An appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice.

Conduct:

An appraiser must perform assignments ethically and competently, in accordance with USPAP and any supplemental standards agreed to by the appraiser in accepting the assignment. An appraiser must not engage in criminal conduct. An aappraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.

In appraisal practice, an appraiser must not perform as an advocate for any party or issue.

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.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital

status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

. . . .

32. The USPAP Scope of Work Rule states:

For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report.

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

Problem Identification

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal, appraisal review or appraisal consulting problem to be solved.

Scope of Work Acceptability

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

Disclosure Obligations

The report must contain sufficient information to allow intended users to understand the scope of work performed.

UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE (USPAP)

EFFECTIVE JANUARY 1, 2008 – DECEMBER 31, 2009

Applicable to the Second, Third, Fourth and Sixth Causes for Discipline

33. USPAP Standards Rule 1-1 states:

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;

. . . .

34. USPAP Standards Rule 1-2 states:

In developing a real property appraisal, an appraiser must:

. . .

(e) dentify the characteristics of the property that are relevant to the type and definition of value 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

. . .

(h) determine the scope of work necessary to produce credible assignment results in accordance with the SCOPE OF WORK RULE.

. . . .

35. USPAP Standards Rule 1-3 states:

When necessary for credible assignment results in developing a market value opinion, an appraiser must:

(a) identify and analyze the effect on use and value of existing land use regulations, reasonably probable modifications of such land use regulations, economic supply and demand, the physical adaptability of the real estate, and market area trends; and

(b) develop an opinion of the highest and best use of the real estate.

36. USPAP Standards Rule 1-4 states:

In developing a real property appraisal, an appraiser must collect, verify, and analyze all information necessary for credible assignment results.

(a) When a sales comparison approach is necessary for credible assignment results, an appraiser must analyze such comparable sales data as are available to indicate a value conclusion.

(b) When a cost approach is necessary for credible assignment results, an appraiser must:

(i) develop an opinion of site value by an appropriate appraisal

method or technique;

(ii) analyze such comparable cost data as are available to estimate the cost new of the improvements (if any); and

(iii) analyze such comparable data as are available to estimate the difference between the cost new and the present worth of the improvements (accrued depreciation).

. . .

(c) When an income approach is necessary for credible assignment results, an appraiser must:

(i) analyze such comparable rental data as are available and/or the potential earnings capacity of the property to estimate the gross income potential 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/or income potential and expenses on reasonably clear and appropriate evidence.

(e) When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.

. . .

(g) When personal property, trade fixtures, or intangible items are included in the appraisal, the appraiser must analyze the effect on value of such non-real property items.

37. USPAP Standards Rule 1-6 states:

In developing a real property appraisal, an appraiser must:

(a) reconcile the quality and quantity of data available and analyzed within the approaches used; and,

(b) reconcile the applicability and relevance of the approaches, methods and techniques used to arrive at the value conclusion(s).

38. USPAP Standards Rule 2-1 states:

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; ....

39. USPAP Standards Rule 2-2 states:

> 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.
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> . . .
>
> (b) The content of a Summary Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:
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> . . .
>
> (iii) summarize information sufficient to identify the real estate involved in the appraisal, including the physical and economic property characteristics relevant to the assignment;
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> . . .
>
> (vii) summarize the scope of work used to develop the appraisal;
>
> (viii) summarize the information analyzed, the appraisal methods and techniques employed, and the reasoning that supports the analyses, opinions, and conclusions; exclusion of the sales comparison approach, cost approach, or income approach must be explained;
>
> (ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, summarize the support and rationale for that opinion;
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> . . .
>
> (c) The content of a Restricted Use Appraisal Report must be consistent with the intended use of the appraisal and, at a minimum:
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> . . .
>
> (iii) state information sufficient to identify the real estate involved in the appraisal;
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> . . .
>
> (vii) state the scope of work used to develop the appraisal;
>
> (viii) state the appraisal methods and techniques employed, state the value opinion(s) and conclusion(s) reached, and reference the workfile; exclusion of the sales comparison approach, cost approach, or income approach must be explained;
>
> (ix) state the use of the real estate existing as of the date of value and the use of the real estate reflected in the appraisal; and, when an opinion of highest and best use was developed by the appraiser, state that opinion; . . . .

40. The USPAP Ethics Rule states:

To promote and preserve the public trust inherent in professional appraisal practice, an appraiser must observe the highest standards of professional ethics. This ETHICS RULE is divided into four sections: Conduct, Management, Confidentiality, and Record Keeping. The first three sections apply to all appraisal practice, and all four sections apply to appraisal practice performed under STANDARDS 1 through 10.

Compliance with USPAP is required when either the service or the appraiser is obligated by law or regulation, or by agreement with the client or intended users, to comply. In addition to these requirements, an individual should comply any time that individual represents that he or she is performing the service as an appraiser.

An appraiser must not misrepresent his or her role when providing valuation services that are outside of appraisal practice.

Conduct:

An appraiser must perform assignments ethically and competently, in accordance with USPAP.

An appraiser 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 advocate the cause or interest of any party or issue.

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.

An appraiser must not use or rely on unsupported conclusions relating to characteristics such as race, color, religion, national origin, gender, marital status, familial status, age, receipt of public assistance income, handicap, or an unsupported conclusion that homogeneity of such characteristics is necessary to maximize value.

. . . .

41. The USPAP Scope of Work Rule states:

For each appraisal, appraisal review, and appraisal consulting assignment, an appraiser must:

1. identify the problem to be solved;
2. determine and perform the scope of work necessary to develop credible assignment results; and
3. disclose the scope of work in the report.

An appraiser must properly identify the problem to be solved in order to determine the appropriate scope of work. The appraiser must be prepared to demonstrate that the scope of work is sufficient to produce credible assignment results.

Problem Identification

An appraiser must gather and analyze information about those assignment elements that are necessary to properly identify the appraisal, appraisal review or appraisal consulting problem to be solved.

Scope of Work Acceptability

The scope of work must include the research and analyses that are necessary to develop credible assignment results.

An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use.

An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased.

Disclosure Obligations

The report must contain sufficient information to allow intended users to understand the scope of work performed.

COST RECOVERY

42. Business and Professions Code section 11409, subdivision (a) states:

Except as otherwise provided by law, any order issued in resolution of a disciplinary proceeding may direct a licensee, applicant for licensure, person who acts in a capacity that requires a license under this part, registrant, applicant for a certificate of registration, course provider, applicant for course provider accreditation, or a person who, or entity that, acts in a capacity that requires course provider accreditation found to have committed a violation or violations of statutes or regulations relating to real estate appraiser practice to pay a sum not to exceed the reasonable costs of investigation, enforcement, and prosecution of the case.

FACTS

THE PORCUPINE CREEK PROPERTY

43. Porcupine Creek was a private residential estate with a private golf course located in Rancho Mirage, California. It consisted of approximately 230 acres. The estate site, as described by Respondent, consisted of 18,430 square feet of living area, including unfinished wine cellars, in the estate home. An additional 9,932 square feet of building area is contained within four guest homes or casitas, pro shop, conference building, pool kitchen, pool restrooms, golf course

restrooms and maintenance buildings. Two detached single family homes within the adjacent subdivision are utilized as part of supporting the operations (laundry facility and various offices) at Porcupine Creek.

44. Respondent prepared two appraisal reports of Porcupine Creek for P.D.N.B. as part of a refinance. The first appraisal report was prepared on November 6, 2007[2] (hereinafter "PC-1") with an effective date of value of October 17, 2007. According to PC-1, the appraised "as is" market value was $207,590,000. The second appraisal report was prepared on June 16, 2008[3] (hereinafter "PC-2") with an effective date of value of June 16, 2008. According to PC-2, the appraised "as is" market value was the same as PC-1, which was $207,590,000. A hard money lender received PC-2 in order to determine the value of Porcupine Creek as real estate collateral for a loan. V.M. was hired by the lender and performed a restricted use appraisal of Porcupine Creek on November 8, 2008. V.M.'s value of Porcupine Creek was $20,365,000. V.M. filed a complaint with the Office of Real Estate Appraisers[4] alleging that Respondent committed a series of errors and omissions that diminished the credibility of PC-1 and PC-2 and that the reports grossly overvalued Porcupine Creek.

45. Respondent completed two additional appraisal reports of Porcupine Creek. The third appraisal report was prepared on May 20, 2009[5] (hereinafter "PC-3") with an effective date of May 11, 2009. The intended user of this report was identified as P.D.N.B. and the stated use was for "loan evaluation". According to PC-3, the appraised "as is" value of the property was reported as $137,070,000.

46. The fourth appraisal report prepared by Respondent of this property was prepared on September 19, 2009 (hereinafter "PC -4").[6] The intended user of this report was identified as N.O. and the purpose of this appraisal was for use in bankruptcy proceedings. According to PC-

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[2] The 2006 edition of USPAP is applicable to PC-1.
[3] The 2008 edition of USPAP is applicable to PC-2.
[4] The Office of Real Estate Appraisers became part of the Department of Consumer Affairs on July 1, 2013 and is now known as the Bureau of Real Estate Appraisers (hereafter "Bureau").
[5] The 2008 edition of USPAP is applicable to PC-3
[6] The 2008 edition of USPAP is applicable to PC-4.

4, the unimpaired (without considering the bankruptcy's impact on value) "as is" market value of the property was reported as $108,500,000, excluding the value of personal property.

47. Respondent's Agreement For Services with Client dated September 25, 2007 described Respondent's assignment with regard to the preparation of PC-1 as valuing the "as is "market value of Porcupine Creek and providing 15 copies of the finished appraisal report for a total fee of $10,000."

48. "MARKET VALUE 'As Is' " was defined by Respondent in PC-1, PC-2 and PC-3 as:

> ...an estimate of the market value of a property in conditions observed upon inspection and as it physically and legally exists without hypothetical conditions, assumptions, or qualifications as of the date of inspection. When an "As Is" valuation premise is used, the property is valued as of a specified date, assuming the property is in **precisely** the condition or status it actually was (is) on the effective date of value. This condition must be accurately described in the appraisal report. (Emphasis in original.)

The National Luxury Market

49. Respondent's Agreement for Services also stated, "The Sales Comparison Approach will attempt to gather sales (national and international) of similar type residences together with private golf courses." However, none of Respondent's four appraisal reports for Porcupine Creek, or his work file, contained any information pertaining to the existence, availability or relevance of such similar sales, or his attempts to gather national and international sales data of luxury homes. Moreover, none of Respondent's reports for Porcupine Creek included a disclosure of why Respondent did not analyze national and international sales of similar properties.

50. In PC-1, PC-3 and PC-4, Respondent analyzed market values in the city of Rancho Mirage and in the Coachella Valley. Respondent did not analyze relevant residential trends for the luxury market in which the typical buyer would not be restricted to the local market. As such, Respondent's conclusions in the Regional and Neighborhood Analyses and Conclusion sections of his reports were inaccurate since these sections of the appraisal reports did not address the national luxury market for the property, including the national trends for luxury homes.

51. Respondent's reports did not discuss and analyze the limited marketability for luxury homes and the high maintenance costs of high end amenities. The market for properties such as Porcupine Creek was limited to a very narrow market segment consisting of the wealthiest individuals. As such, a buyer for the subject property would also consider similar type properties with high-end amenities located throughout the United States and even internationally.

52. Respondent did not discuss the national sales or listings, and sales trends, of luxury properties that were more similar to the subject property than the properties in the local luxury market. For example, as of July, 2008, the highest priced luxury estate that sold was for beach front property in Palm Beach, Florida, which sold for $95 million. The property was originally listed in May, 2007 for $125 million. In May, 2008, the listing price was reduced to $100 million. This property consisted of 6 acres, 62,000 square feet of living area, a 48-car garage and extensive ocean frontage. It had no golf course and was reportedly purchased for its development potential.

53. Other sales or listings of luxury estates or properties that included golf and/or high-end amenities were as follows (Respondent's appraised values for the subject property are included for comparison purposes):

Property	**Date**	**Price**	**GBA/ Year Built**	**Price Per GBA[7]**	**Acres**	**Holes**
Subject Property Porcupine Creek Rancho Mirage, CA		**Respondent's Appraised Values**	**18,430** 2001+/-		230	19
	10/17/07 6/16/08 5/11/09 9/14/09 9/14/09	$207,590,000 *Appraised* $207,590,000 " $137,070,000 " $108,500,000 " $73,500,000 "		$11,264 $11,264 $7,437 $5,887 $3,988		
Dean Gardens 5100 Old Alabama Rd. Alpharetta, GA	7/30/10 **6/1/09**	$7,600,000 *Sold* **$13,900,000** Last Listed $32,000,000 Prior Listing ***$25,000,000 or $40,000,000 (Original Cost in 1992)***	**29,906** 1992	$254 $465	58	18

[7] Price per Gross Building Area (GBA) is based on the GBA of the main improvements.

Property	Date	Price	GBA/ Year Built	Price Per GBA[8]	Acres	Holes
Le Reve 2015 Trammel Road Cumming, GA	7/8/11 3/9/11 **3/18/08**	$11,500,000 *Sold* $16,500,000 Asking Price $45,000,000 Prior Listing ***$54,000,000 (Original Construction Cost Excluding Furnishings)***	**47,194** 2006	$244 $350 $954	72.5	18
Beaver Dam Farms 3085 Smithonia Rd. Athens, GA	**12/03/02**	$10,500,000 *Sold*	**17,810** 1981	$590	499	18
Three Ponds Farm 939 Scuttle Hole Road Bridgehampton, NY	**8/23/07** 2003	$68,000,000 Last Listing $75,000,000 Prior Listing	**20,000** 1999+/-	$3,400 $3,750	60	18
Tranquility 525 Highway 50 Zephyr Cove, NV	5/31/11 **9/30/06**	$75,000,000 Reduction $100,000,000 Orig. Asking	**20,000** + 2000	$3,750 $5,000	210	2
Floridian Golf & Yacht Club Palm City, Florida	4/1/10	$25,600,000 *Sold*	**65,000** 1996	$427	300	18

54. Even if national sales were not utilized, preliminary research of national sales would have disclosed that the cost to develop the properties in this market was higher than the listing or sales prices. In other words, cost does not equal value. This is due to a phenomenon known as "obsolescence." Luxury homes are built to reflect the particular tastes, desires and quirks of their own individual owners. Frequently, these improvements are idiosyncratic, and if buyers have the money, they prefer not to live in someone else's dream home; they will just build their own dream home. The larger and more expensive the property, the greater is the obsolescence. Respondent's reports for Porcupine Creek did not include an analysis of such luxury estate sales or listings although Respondent's original engagement letter included researching similar properties on a national and international scale. Such an analysis was necessary to analyze the effect of obsolescence on the subject property's market value.

[8] Price per Gross Building Area (GBA) is based on the GBA of the main improvements.

55. Even when addressing the **local** luxury market, Respondent did not indicate that sales activity within the local luxury market generally ranged in price from between $3,000,000 to $10,000,000 and that many of the luxury homes were within gated golf communities, unlike Porcupine Creek that had a private golf course. The homes in the local luxury market were typically occupied on a seasonal basis as secondary residences. Custom homes from within these golf-oriented developments represented the upper tier of the local luxury market. Buyers in the upper tier of the local luxury market were more plentiful than those who would consider a large estate such as the subject property.

Site Characteristics

56. Respondent's reports did not properly analyze a 160-feet wide flood control easement that extended along the westerly portion of Porcupine Creek. The flood control easement affected the usable area of three of the existing parcels, reducing the net usable area for the parcels and aggregate size of the estate by about 12.47 acres.

57. Respondent's reports did not identify an adjacent elementary school along the northerly border of Porcupine Creek. The proximity of the school to one of Porcupine Creek's golf course greens was a detriment for an estate property. Respondent's reports also did not mention that a portion of Indian Trail Road appeared to be an easement that crossed Porcupine Creek and served as ingress and egress for the school.

58. Respondent's reports did not indicate that ingress and egress for Porcupine Creek through Dunes View Road was through a subdivision of relatively older, smaller homes, substantially diminishing the privacy of ingress and egress to and from Porcupine Creek.

Zoning

59. Porcupine Creek consisted of two clusters zoned for residential use, surrounded by open space. Respondent estimated that the land area of the two residential parcels was about 16 acres. Respondent did not provide any support for his estimates, which varied from the Planning Department's estimate of nine acres. Respondent's reports erroneously identified the zoning for the residential parcels as equivalent to "R-E – Residential Estate" and the golf course as "Personal Open Space." According to Respondent's reports, the "Estate Home" zoning allowed one home

per acre. The correct zoning for the residential parcels was "Residential – Very Low Density, 2 dwelling units/acre maximum [R-L-2]." The zoning map for Porcupine Creek showed that the Assessor's Parcel Numbers ("APN") for the residential parcels had a combination, and sometimes, overlapping zoning classifications. This was atypical and warranted Respondent's scope of work to be expanded to include further investigation, such as an interview with the city planning officials and review of background documents pertaining to the unusual characteristics of the subject property.

60. The correct zoning for the golf course areas were "Open Space Private ("OS-PV)" and Open Space Water ("OS-W"). Respondent's reports did not address the Open Space Water zoning classification. The Open Space Water classification was for the East Rancho Mirage Storm Channel, which extended across the westerly portions of Porcupine Creek. The East Rancho Mirage Storm Channel was a 160-foot wide flood control channel easement that impacted 12.47 acres and diminished the utility of the entire property. In addition, the easterly portion of the easement had a service road for use by the Coachella Valley Water District and the subject property.

Development Agreement

61. Porcupine Creek was developed under a Development Agreement with the City of Rancho Mirage, which imposed specific restrictions on development and uses for the property. According to the Development Agreement, "a single family residence together with 4 guest houses, an 18 hole golf-course and related amenities are permitted uses of the Property" and "no commercial use shall occur ... no membership to occupy or use the Property or any part thereof including golf memberships or any rights or interests to occupy any resident or any part thereof or play golf shall be sold and or otherwise conveyed, granted or given...." Furthermore, City of Rancho Mirage Ordinance Number 735 amended the Development Agreement on June 15, 2000 to include the provision that "the unutilized balance of the Property shall remain open space and un-developed." Respondent did not disclose the existence of the Development Agreement and did not analyze the restrictions it imposed on the property's use and its "as is" market value.

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Highest and Best Use

62. Respondent's PC-1, PC-3 and PC-4 reports contained analyses of the property's highest and best use, defined by Respondent as "that reasonable and probable use that supports the highest present value, as defined, as of the effective date of the appraisal." The highest and best use is the use that is found to be physically possible, legally permissible, financially feasible, and maximally productive, which results in the highest land value. Respondent analyzed the "highest and best use" from two perspectives: (1) the highest and best use as if the land was vacant and without any buildings, and (2) the highest and best use "as is."

Highest and Best Use As If Vacant Land – No Buildings

63. If the subject property was vacant with no buildings, PC-1 concluded: that the highest and best use of the subject property was:

> The highest and best use of the site "as if vacant" would be for immediate development as **12 excellent quality luxury estate residences** with casitas, guest homes, employee residences and on site recreational amenities. [Emphasis added.]

P-3 and P-4 contained similar conclusions. Respondent's conclusion of the highest and best use if vacant conflicted with the Development Agreement and was unsupported by market evidence.

64. Respondent's reports estimated that a development of 12 luxury estate homes would have a value of $15 million to $25 million but Respondent did not adequately address the marketability of larger homes within the Coachella Valley at this price range. Respondent did not mention the existing inventory of luxury residences that were similar in living area to the subject property or the market conditions for this segment of the market.

65. Respondent's reports did not adequately address the financial feasibility and maximum profitability of his conclusion that the highest and best use for the property if vacant was the development of 12 luxury estate homes.

Highest and Best Use – "As Is"

66. If considered "as is", Respondent's reports concluded that the highest and best use was "continued use as an estate compound and amenities and a finished site for immediate development of one additional estate home." The additional estate home would be built "on the

excess land south of the existing estate home," which Respondent stated was legally conforming, financially feasible and physically possible. Respondent did not address City of Rancho Mirage Ordinance Number 735 and the Development Agreement that restricted use of Porcupine Creek as a private single family estate and required the unutilized balance of the property to remain open space and undeveloped.

67. Respondent's reports did not address the legally permissible test for the highest and best use by omitting the restrictions specified within the Development Agreement and City of Rancho Mirage ordinances.

68. Respondent's PC-1 report improperly addressed the physical possibility test for the highest and best use by incorrectly implying that the property could support up to 16 estate homes on 16 designated acres. Such a use conflicted with the use restrictions in the Development Agreement. In addition, Respondent's estimate of "16 designated acres" also conflicted with the Planning Commission Report that estimated a "six acre site [that] could accommodate the main residence and that the four guest houses will occupy about three acres...." PC-1 also stated the property had "excess" land south of the existing estate home that could be used to construct an additional estate home. This statement conflicted with the covenants and restrictions stated in the Development Agreement.

69. Respondent's reports did not adequately address the financial feasibility test for the highest and best use in that Respondent did not analyze the existing inventory of similarly sized luxury residences and the market conditions for this segment of the market.

Valuation Methodology

70. According to Respondent's reports, the appraisals were to determine the "as is" market value of the property as purchased by one buyer. Respondent used the Cost Approach and Sales Comparison Approach to determine "as is" market value. Respondent identified five components of Porcupine Creek that he used for the Cost and Sales Comparison Approaches to value the property. These components were:

a. the estate home complex, 8± acres of associated land and all on-site amenities including the pool complex, recreation areas, hard landscape (including trees), lakes (reservoirs), waterscape, and golf course;

b. the guest homes and 4± acres of associated land;

c. a 4± acre parcel of land set aside for a future additional estate home;

d. 57± acres of mountain reserve land;

e. two single family residences on the northeastern perimeter of the estate compound.

71. Respondent's valuation did not identify and address development constraints and use restrictions, which resulted in the use of an improper valuation methodology that did not represent the "as is" market values:

a. Respondent's inclusion of "a 4± acre parcel of land set aside for a future additional estate home" was not legally permissible and conflicted with the Development Agreement and covenants, which ran with the land.

b. Respondent included an improper selection of land sales for the valuation of Porcupine Creek's open space. These open space land sales were based on their residential development potential. Inclusion of these sales was inaccurate since the subject's open space had no residential development potential.

c. Respondent overstated the land area for the estate home complex as 16 acres rather than the nine acres as set forth in the Planning Commission Report.

Valuation of Golf Course Component by Comparable Sales Approach

72. Respondent's valuation of the golf course consisted of two components: the value of the open space land and the cost to add the golf course improvements. Respondent's valuation of Porcupine Creek's golf course consisted of the sum of these two components. Both PC-1 and PC-2 indicated a value of $69,130,000 for the golf course land and a value of $67,340,000 for the golf course improvements for a total value of $136,470,000 (excluding Golf Course Equipment) for Porcupine Creek's golf course. This value translated to $7,182,632 per hole (based on 19 holes) and $869,232 per acre (based on 157 acres).

73. Respondent improperly used land sales that had residential development potential as comparable sales in valuing the subject's open space component. The land sales selected by Respondent were not land sales for the development of a golf course. In PC-1, Respondent used four "open space" sales in the Sales Comparison Approach that had no golf course improvements

and were not zoned as open space. These land sales were for the purpose of residential development, which Respondent did not address or disclose in his reports. Based upon these "open space" land sales, Respondent concluded a unit value of $10.11 per square foot of Private Open Space area, which he then applied to the property's 157 acres of "Private Open Space", resulting in a valuation in excess of $69 million for the golf course land alone.

74. In PC-3, Respondent included a $25 million land sale in Palms Springs ($285,193 per gross acre based on 87.66 acres). Respondent represented that this was an arms length market transaction rather than a foreclosure sale where the lender took back the failed development. The transaction included approximately 385 residential lots, some streets and the open space that was a failed golf course. Respondent understated the actual land area as 87.66 acres when the actual area was at least 218.02 acres, thereby overstating the price per gross acre.

75. After adjustments to the "Open Space" Sales, the PC-3 report concluded a unit value of $281,791 per acre, or $6.47 per square foot. After adjustments to the same "Open Space" Sales, PC-4 concluded a value of $229,269 per acre, or $5.26 per square foot. Respondent attributed the difference between the two values to various adjustments he made for declining market conditions. The difference between the Open Space land values in PC-3 and PC-4 was a decrease of approximately 18.7 percent over a four month time period. This equated to an annual drop in land value of approximately 56 percent. The rate of drop for the Open Space land value between the date of values for the PC-3 and PC-4 reports was unsupported.

76. Although Respondent's Reports identified the value to be appraised as the "As-Is" Market Value, and proceeded to value the various components, Respondent's Reports did not mention any sales of golf courses, which was the most appropriate method for valuing the golf course component of Porcupine Creek and which best reflected the "as is" market value for this component. Available golf course sales indicated a "per hole" price range between $176,944 and $344,444 per hole (which included the land, the golf course and equipment) and a "per acre" price range between $18,305 and $31,000, which were significantly less than Respondent's valuation of $7,182, 632 per hole or $869,232 per acre.

77. As of the date of PC-2, golf course sales and listings for this improved property type showed a unit value of $27,011 to $45,000 per acre (without consideration of any adjustments to account for the subject property's limitations on use as imposed by the Development Agreement). In contrast, Respondent's PC-1 and PC-2 reports reflected a unit value of $869,236 per acre (based on the subject's 157 acres for this component that included land and improvements).

78. Respondent's golf course value of $869,236 per acre grossly exceeded the unadjusted value indications reflected in the available market information for this component. The available golf course sales reflected market transactions that did not have the same restrictions or limitations on use as the subject property. Therefore, the utility of the subject property was negatively impacted by the conditions of the Development Agreement since the burden of maintaining the golf course was limited to the property owner. In addition, the high cost for use and maintenance of the golf course element would severely diminish the pool of potential buyers.

Valuation of Golf Course Component by Cost Approach

79. Respondent's golf course related development costs was unsupported. Respondent determined the cost for the golf course-related development was approximately $67,340,000, excluding Respondent's open space land value of $69,130,000. The $67,340,000 cost reflected a cost of $3,544,210 per hole (based on 19 holes). The development costs for the highest category of golf courses between December 2005 and December 2009 ranged from about $600,000 to $700,000 per hole for Class IV golf courses. Class IV ranges were described as "better championship-type course[s] on good underlying terrain, fairway and greens contoured, large trees transplanted, driving range, may have name architect." Respondent's total cost in excess of $3 million per hole (excluding land) was unsupported.

80. Respondent's analysis of the golf course costs in PC-1, PC-3 and PC-4 reports was set forth in two sections of the reports. The first section was entitled "Cost Calculations for Miscellaneous Outbuildings & Amenities" and included the Golf Course related improvements. This section of PC-1 report indicated that the "Physical, Functional & External Depreciation" was one lump sum of $251,500. This section of PC-3 and PC-4 indicated that the "Physical &

Functional Depreciation" was zero. Estimates of depreciation are derived from market evidence. Respondent's estimates of depreciation were unsupported.

81. Respondent's reports refer to "replacement cost" rather than "reproduction cost." Respondent's reliance on replacement cost for the cost basis was erroneous. When replacement cost is used instead of reproduction cost, there is no cost allotted for any superadequate items. All forms of functional obsolescence present in the subject property would also be present in reproduction of that property. On the other hand, a replacement cost approach would not exhibit certain forms of obsolescence that existed in the original development.

82. The following is a summary of golf course related values from Respondent's reports based on the cost approach:

Reports:	**PC-2**[9]	**PC-3**	**PC-4**
Effective Date of Value:	**6/16/2008**	**5/11/2009**	**9/14/2009**
Open Space Land 157 Acres	$69,130,000	$44,248,000	$35,995,000
Golf Course	$27,357,000	$17,784,000	$14,934,000
Golf Clubhouse (pro-shop/conference)	$475,000	$309,000	$269,000
Lakes/Reservoirs/Wells/Pumps	$2,140,000	$1,392,000	$1,295,000
Landscape-Hardscape-Water Treatments-Fountains (137 Acres)	$37,111,000	$24,490,000	$20,816,000
Storage Yard Improvements	$75,000	$49,000	$45,000
Perimeter Fence and Entry Gate	$182,000	$118,000	$109,000
Total*	**$136,470,000**	**$88,390,000**	**$73,463,000**
Respondent's Indicated Total Value of Golf Course Component[10]**:**			
Value Per Acre: (Based on 157 Acres)	**$869,236**	**$562,994**	**$467,917**
Value Per Hole: (Based on 19 Holes)	**$7,182,632**	**$4,652,105**	**$3,866,474**

83. Available golf course sales indicated a decline in values that started prior to the date of value for the PC-1 report. The available sales information of improved golf courses indicated the value of golf courses, including land, was substantially less than the purported costs of the subject's golf course. This difference put into question Respondent's estimates of land and

[9] Respondent's PC-1 report reflected the same component values as indicated in the PC-2 report.

[10] These values exclude Respondent's estimates of depreciated golf course equipment, the Pro Shop and conference furnishings. The referenced lakes and fountain costs may partially overlap onto the Primary Estate and Guest House Land.

improvement costs. This difference also showed that substantial accrued depreciation existed in the market for the subject's golf course element.

84. Although PC-1 and PC-2 made reference to functional obsolescence for the golf course component, this same section of the PC-3 and PC-4 reports identified no "Physical & Functional Depreciation." Respondent's inclusion of replacement costs implied no superadequacies existed and did not account for obsolescence. Available articles and market information clearly indicated cost did not equal value. Therefore, Respondent's valuation based on a cost analysis did not address the appraisal problem of estimating the "As Is" Market Value.

85. Although Respondent's PC-3 and PC-4 reports reflected declining values from the values in PC-2, Respondent did not provide any support for the rate of decline for what Respondent vaguely identified as "External/Economic Obsolescence." The difference between the effective date of value for the PC-2 and PC-3 reports was 329 actual days or approximately 11 months, based on a 30-day month. The difference in values in PC-2 and PC-3 reflected about a 37 percent annual rate of change in total value between the two reports. The difference between the effective date of value for the PC-3 and PC-4 reports was 126 actual days or approximately 4.2 months, based on a 30-day month. This difference reflected about a 42 percent annual rate of change in total value (less personal property) between the two reports. Respondent provided no support for these rates of decline.

Valuation of Residential Estate Component

86. In valuing the residential estate component of Porcupine Creek, PC-1 and PC-2 used four sales as comparable sales. The square footage of the living areas in the comparable sales used were 7,100 square feet, 9,933 square feet, 9,810 square feet and 19,961 square feet, respectively. Three of the sales were local sales in the Coachella Valley while the fourth sale was located in Los Angeles. The square footage of Porcupine Creek's residential estate was 18,430. In order to adjust for the difference in square footage, Respondent adjusted the value of Porcupine Creek's residential estate by about $20 million, which was equivalent to adding approximately $2,000 per square foot to his valuation of Porcupine Creek's residential estate.

87. Respondent did not mention, or include, listings of larger estate residences in Coachella Valley, which were more reflective of larger estate residences and were more similar in size to Porcupine Creek's living area. The omission of this segment of the market was important since the luxury estate market was most active in the Coachella Valley below the $9 million price level.

88. The five listings available at the time of Respondent's PC-1 and PC-2 reports, but not selected by Respondent, had the following living area square footages and list prices:

Property:	Listing 1	Listing 2	Listing 3	Listing 4	Listing 5
	75297 Falling Rock Lane Indian Wells	45696 Delgado Drive Indian Wells	74465 Pablo Verde Dr. Indian Wells	74300 Quail Lakes Dr. Indian Wells	457 W. Hermosa Pl. Palm Springs
Listing Price	**$19,950,000**	**$19,000,000** (Later Reduced)	**$13,900,000**	**$13,900,000** (Later Reduced)	**$15,950,000**
Living Area Sq. Ft.	**25,924**	**25,447**	**19,188**	**15,389**	**15,000**
Price per Sq. Ft.	$769.56	$746.65	$724.41	$903.24	$1,063.33
Listing Date	3/28/07	7/28/06	9/30/07	5/14/07	3/6/08
Off Market Date	7/14/08	6/28/07	7/20/09	7/14/08	7/24/08
Days on Market	598	335	659	431	140

89. These listings contradicted Respondent's size adjustments for the living areas of the four sales he selected. The market difference per square foot ranged from $725 to $770 per square foot, inclusive of land and other improvements. In contrast, in PC-1 Respondent used about a $2,000 per square foot adjustment, exclusive of land and other improvement values. PC-3 and PC-4 used an adjustment of about $1,289 to $1,326 dollars per square foot, exclusive of land and other improvement values. Respondent's size adjustments to the four comparable sales he selected were not supported. Respondent's omission of listings of estate residences in Coachella Valley that were more similar in size to Porcupine Creek was not an error attributable to a lack of competency.

90. The listings of estate residences in Coachella Valley that were more similar in size to Porcupine Creek also showed that the market for larger residences was more limited, with substantially longer marketing times, and even though actively marketed, some were not sold.

91. The fourth allegedly comparable sale Respondent selected in PC-1 and PC-2 was the sale of an estate home in Los Angeles. PC-1 stated that the views from the Los Angeles home were "similar" to the views from the subject property. However, Respondent did not mention that the Los Angeles property, located 120 miles northwest of Porcupine Creek, had blue water ocean views while Porcupine Creek did not. Respondent's report did not analyze the effect on value that the Los Angeles property's ocean views would have in his comparable sales analysis.

Personal Property Valuation

92. Respondent's PC-1, PC-2 and PC-3 included valuations for personal property or furnishings, fixtures and equipment. These valuations excluded the golf course equipment. PC-4 excluded personal property therefore there was no personal property valuation in PC-4. Respondent's personal property valuations in PC-1 and PC-2 were the same: $13,092,000. In PC-3, Respondent's personal property valuation was $8,517,000. The subtotal of the personal property in Respondent's PC-1 and PC-2 reports exceeded the sales prices of Respondent's selected sale comparables located in the Coachella Valley that were furnished residences. Respondent's work files did not contain any support or breakdown for the personal property valuations.

FIRST CAUSE FOR DISCIPLINE

(Violations of 2006 USPAP – PC-1)

93. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Porcupine Creek Appraisal Report No. 1 (PC-1), that Respondent prepared on November 6, 2007 for the property located 42765 Dunes View Road, Rancho Mirage, California (Porcupine Creek). Respondent's license is subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 43 – 92 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify relevant property characteristics of the subject property, including the omission of pertinent city ordinances that referred to a recorded Development Agreement, which contained certain restrictions on the use of the subject property.

Those restrictions include the prohibition of any commercial use, including the sale or conveying golf memberships or of any rights or interest to occupy any residence or any part thereof. Respondent overstated the acreage of the residentially zoned land area and failed to adequately describe the diminished land area resulting from an existing flood control easement. Respondent also failed to adequately describe the luxury housing market. These are violations of Standards Rule, hereinafter "S.R.", 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent's determination of highest and best use was based upon a faulty analysis that failed to consider the conditions imposed by city ordinances and a Development Agreement, which restricted the use of the subject property to a large residential estate with a golf course amenity intended primarily for the use of the estate's residents and guests. Respondent misrepresented the most probable purchaser as two purchasers, the first being an "Individual" for the luxury home site and the second as being a "Developer, Investor" for the "Golf Course, Guest Homes and Remaining Land". Respondent misrepresented additional development potential on portions of the subject site, when such development potential did not exist and was contrary to the city ordinances and the Development Agreement. Respondent's Report contained conclusions and representations of highest and best use that were not supported by the legal permissibility, physically possible, financially feasible, or maximum profitability considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(ix).

c. Respondent's valuation methodology for the sales comparison approach included improved sales of various components, but failed to disclose or analyze any available sales of improved golf courses. Respondent's sales comparison approach inappropriately used sales of land that had significant residential development potential as a basis to value the subject property's open space. Respondent used unsupported depreciated costs of improvements when sales of improved golf courses were available that reflected substantially lower values for this component. Respondent misrepresented adjustments in his analysis of comparable sales for the estate residence component and omitted listings and relevant analyses of high-end residences. Respondent misrepresented the characteristics of the subject property, and misrepresented differences including the physical, economic and legal characteristics of the comparable sales and

allocated values. As a result, Respondent failed to provide adequate support for his value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(viii).

d. Respondent failed to develop a credible opinion of the various component site values, analyze relevant cost data to estimate the cost if new, of the improvements, and analyze the difference between the cost if new and the present worth of the improvements (accrued depreciation), resulting in a misleading report and an unsupported valuation in his cost approach analysis. These are violations of S.R. 1-4 (b)(i)(ii)(iii), and 2-2 (b)(viii).

e. Respondent failed to analyze the various component parts as a whole. Respondent's "As Is" Market valuation of the estate erroneously reflected the sum of the individually appraised component values, which were predicated on purported market activity for each of the respective components. These are violations of S.R. 1-4 (e), and 2-2 (b)(viii).

f. Respondent failed to provide adequate support and analyses of the various sums of Furnishings, Fixtures and Equipment. This is a violation of S.R. 1-4 (g), and 2-2 (b)(viii).

g. Respondent failed to provide sufficient and relevant information pertaining to the quality and quantity of data available and analyzed under the Cost and Sales Comparison approaches and reconciled to an unsupported Cost Approach valuation despite the availability of market information that conflicted with Respondent's component allocations and final value estimate. This is a violation of S.R. 1-6 (a)(b), and 2-2 (b) (viii).

h. Based on subparagraphs a - g above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and provide the reasoning that supports the analyses, opinions, and conclusions in violation of S.R. 1-1(a).

i. Based on subparagraphs a - g above, Respondent failed to identify the problem to be solved and include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (h), 2-2 (b)(vii), and the Scope of Work Rule.

j. Based on subparagraphs a - g above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report

sufficient information to enable the intended users of the appraisal to understand the appraisal properly, in violation of (S.R. 2-1 (a)(b).

k. Based on subparagraphs a - g above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject property and the selected land and improved sales that resulted in communicating the assignment results in a misleading or fraudulent manner, in violation of the Conduct Section of the Ethics Rule.

SECOND CAUSE FOR DISCIPLINE

(Violations of 2008 USPAP – PC-2)

94. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Porcupine Creek Appraisal Report No. 2 (PC-2), that Respondent prepared on June 16, 2008 for the property located 42765 Dunes View Road, Rancho Mirage, California (Porcupine Creek). Respondent's license is subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 43 – 92 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify relevant property characteristics of the subject property, including the omission of pertinent city ordinances that referred to a recorded Development Agreement, which contained certain restrictions on the use of the subject property. Those restrictions included the prohibition of any commercial use, including the sale or conveying golf memberships or of any rights or interest to occupy any residence or any part thereof. Respondent overstated the acreage of the residentially zoned land area and failed to adequately describe the diminished land area resulting from an existing flood control easement. Respondent also failed to adequately describe the luxury housing market. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (c)(iii).

b. Respondent's determination of highest and best use was based upon a faulty analysis that failed to consider the conditions within the available city ordinances and a Development Agreement, which restricted the use of the subject property to a large residential estate with a golf course amenity intended primarily for the use of the estate's residents and

guests. Respondent misrepresented the most probable purchaser as two purchasers, the first being an "Individual" for the luxury home site and the second as being a "Developer, Investor" for the "Golf Course, Guest Homes and Remaining Land". Respondent misrepresented additional development potential on portions of the subject site, when such development potential did not exist and was contrary to the city ordinances and Development Agreement. Respondent's Report contained conclusions and representations of highest and best use that were not supported by the legal permissibility, physically possible, financially feasible, or maximum profitability considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (c)(ix).

c. Respondent's valuation methodology for the sales comparison approach included improved sales of various components, but failed to disclose or analyze any available sales of improved golf courses. Respondent's sales comparison approach inappropriately used sales of land that had significant residential development potential to value the subject property's open space. Respondent used unsupported depreciated costs of improvements when sales of improved golf courses were available that reflected substantially lower values for this component. Respondent misrepresented adjustments to the comparable sales for the estate residence component and omitted listings and relevant analyses of high-end residences. Respondent misrepresented the characteristics of the subject property, and misrepresented differences including the physical, economic and legal characteristics of the comparable sales and allocated values. As a result, Respondent failed to provide adequate support for the various value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (c)(viii).

d. Respondent failed to develop a credible opinion of the various component site values, analyze relevant cost data to estimate the cost if new of the improvements and analyze the difference between the cost if new and the present worth of the improvements (accrued depreciation), resulting in a misleading report and an unsupported valuation in the Cost Approach. These are violations of S.R. 1-4 (b)(i)(ii)(iii), and 2-2 (c)(viii).

e. Respondent failed to analyze the various component parts as a whole. Respondent's "As Is" Market valuation of the estate erroneously reflected the sum of the

individually appraised component values, which were predicated on purported market activity for each of the respective components. These are violations of S.R. 1-4 (e), and 2-2 (c)(viii).

f. Respondent failed to provide adequate support and analyses of the various sums of Furnishings, Fixtures and Equipment in violation of S.R. 1-4 (g), and 2-2 (c)(viii).

g. Respondent failed to provide sufficient and relevant information pertaining to the quality and quantity of data available and analyzed under the Cost and Sales Comparison approaches and reconciled to an unsupported Cost Approach despite the availability of market information that conflicted with Respondent's component allocations and final value estimate. This is a violation of S.R. 1-6 (a)(b), and 2-2 (c) (viii).

h. Based on subparagraphs a – g above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and provide the reasoning that supports the analyses, opinions, and conclusions in violation of S.R. 1-1(a).

i. Based on subparagraphs a – g above, Respondent failed to identify the problem to be solved and include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (h), 2-2 (c)(vii), and the Scope of Work Rule.

j. Based on subparagraphs a – g above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly in violation of S.R. 2-1 (a)(b).

k. Based on subparagraphs a – g above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject property and the selected land and improved sales that resulted in communicating the assignment results in a misleading or fraudulent manner in violation of the Conduct Section of the Ethics Rule.

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THIRD CAUSE FOR DISCIPLINE

(Violations of 2008 USPAP – PC-3)

95. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Porcupine Creek Appraisal Report No. 3 (PC-3), that Respondent prepared on May 20, 2009 for the property located 42765 Dunes View Road, Rancho Mirage, California (Porcupine Creek). Respondent's license is subject to discipline for the USPAP violations listed as follow, which are more fully set forth in paragraphs 43 – 92 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify relevant property characteristics of the subject property, including the omission of pertinent city ordinances that referred to a recorded Development Agreement that contained certain restrictions on the use of the subject property. Restrictions included the prohibition of any commercial use, including the sale or conveying golf memberships or of any rights or interest to occupy any residence or any part thereof. Respondent overstated the acreage of the residentially zoned land area and failed to adequately describe the diminished land area resulting from an existing flood control easement. Respondent also failed to adequately describe the luxury housing market. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent's determination of highest and best use was based upon a faulty analysis that failed to consider the conditions within the available city ordinances and Development Agreement, which restricted the use of the subject property to a large residential estate with a golf course amenity intended primarily for the use of the estate's residents and guests. Respondent misrepresented the most probable purchaser as two purchasers, the first being an "Individual" for the luxury home site and the second as being a "Developer, Investor" for the "Golf Course, Guest Homes and Remaining Land". Respondent misrepresented additional development potential on portions of the subject site, which did not exist and were contrary to the city ordinances and Development Agreement. Respondent's Report contained conclusions and representations of highest and best use that were not supported by the legal permissibility,

physically possible, financially feasible, or maximum profitability considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(ix).

c. Respondent's valuation methodology for the sales comparison approach included improved sales of various components, but failed to disclose or analyze any available sales of improved golf courses. Respondent's sales comparison approach inappropriately used sales of land that had significant residential development potential to value the subject property's open space. Respondent used unsupported depreciated costs of improvements when sales of improved golf courses were available that reflected substantially lower values for this component. Respondent misrepresented adjustments to the comparables sales for the estate residence component and omitted listings and relevant analyses of high-end residences. Respondent misrepresented the characteristics of the subject property, and misrepresented differences including the physical, economic and legal characteristics of the comparable sales and allocated values. As a result, Respondent failed to provide adequate support for the various value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(viii).

d. Respondent failed to develop a credible opinion of the various component site values, analyze relevant cost data to estimate the cost if new of the improvements and analyze the difference between the cost if new and the present worth of the improvements (accrued depreciation), resulting in a misleading report and an unsupported valuation in the Cost Approach. These are violations of S.R. 1-4 (b)(i)(ii)(iii) and 2-2 (b)(viii).

e. Respondent failed to analyze the various component parts as a whole. Respondent's "As Is" Market valuation of the estate erroneously reflected the sum of the individually appraised component values, which were predicated on purported market activity for each of the respective components. These are violations of S.R. 1-4 (e), and 2-2 (b)(viii).

f. Respondent failed to provide adequate support and analyses of the various sums of Furnishings, Fixtures and Equipment in violation of S.R. 1-4 (g), and 2-2 (b)(viii).

g. Respondent failed to provide sufficient and relevant information pertaining to the quality and quantity of data available and analyzed within the Cost and Sales Comparison approaches and reconciled to an unsupported Cost Approach despite the availability of market

information that conflicted with Respondent's component allocations and final value estimate. This is a violation of S.R. 1-6 (a)(b) and 2-2 (b) (viii).

h. Based on subparagraphs a - g above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and provide the reasoning that supports the analyses, opinions, and conclusions in violation of S.R. 1-1(a).

i. Based on subparagraphs a - g above, Respondent failed to identify the problem to be solved and include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (h), 2-2 (b)(vii), and Scope of Work Rule).

j. Based on subparagraphs a - g above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly in violation of S.R. 2-1 (a)(b).

k. Based on subparagraphs a - g above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject property and the selected land and improved sales that resulted in communicating the assignment results in a misleading or fraudulent manner in violation of the Conduct Section of the Ethics Rule.

FOURTH CAUSE FOR DISCIPLINE

(Violations of 2008 USPAP – PC-4)

96. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Porcupine Creek Appraisal Report No. 4 (PC-4), that Respondent prepared on September 19, 2009 for the property located 42765 Dunes View Road, Rancho Mirage, California (Porcupine Creek). Respondent's license is subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 43 – 92 above, and incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify relevant property characteristics of the subject property, including the omission of pertinent city ordinances that referred to a recorded Development Agreement that contains certain restrictions on the use of the subject property. Restrictions included the prohibition of any commercial use, including the sale or conveying golf memberships or of any rights or interest to occupy any residence or any part thereof. Respondent overstated the acreage of the residentially zoned land area and failed to adequately describe the diminished land area resulting from an existing flood control easement. Respondent also failed to adequately describe the luxury housing market. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent's determination of highest and best use was based upon a faulty analysis that failed to consider the conditions within the available city ordinances and Development Agreement, which restricted the use of the subject property to a large residential estate with a golf course amenity intended primarily for the use of the estate's residents and guests. Respondent misrepresented the most probable purchaser as two purchasers, the first being an "Individual" for the luxury home site and the second as being a "Developer, Investor" for the "Golf Course, Guest Homes and Remaining Land". Respondent misrepresented additional development potential on portions of the subject site, which did not exist and were contrary to the city ordinances and Development Agreement. Respondent's Report contained conclusions and representations of highest and best use that were not supported by the legal permissibility, physically possible, financially feasible, or maximum profitability considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(ix).

c. Respondent's valuation methodology for the sales comparison approach included improved sales of various components, but failed to disclose or analyze any available sales of improved golf courses. Respondent's sales comparison approach inappropriately used sales of land that had significant residential development potential to value the subject property's open space. Respondent used unsupported depreciated costs of improvements when sales of improved golf courses were available that reflected substantially lower values for this component. Respondent misrepresented adjustments to the comparable sales for the estate residence

component and omitted listings and relevant analyses of high-end residences. Respondent misrepresented the characteristics of the subject property, and misrepresented differences including the physical, economic and legal characteristics of the comparable sales and allocated values. As a result, Respondent failed to provide adequate support for the various value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(viii).

d. Respondent failed to develop a credible opinion of the various component site values, analyze relevant cost data to estimate the cost if new of the improvements and analyze the difference between the cost if new and the present worth of the improvements (accrued depreciation), resulting in a misleading report and an unsupported valuation in the Cost Approach. These are violations of S.R. 1-4 (b)(i)(ii)(iii), and 2-2 (b)(viii).

e. Respondent failed to analyze the various component parts as a whole. Respondent's "As Is" Market valuation of the estate erroneously reflected the sum of the individually appraised component values, which were predicated on purported market activity for each of the respective components. These are violations of S.R. 1-4 (e), and 2-2 (b)(viii).

f. Respondent failed to provide sufficient and relevant information pertaining to the quality and quantity of data available and analyzed within the Cost and Sales Comparison approaches and reconciled to an unsupported Cost Approach when market information was available that conflicted with the component allocations and final value estimate. These are violations of S.R. 1-6 (a)(b), and 2-2 (b) (viii).

g. Based on subparagraphs a - g above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and provide the reasoning that supports the analyses, opinions, and conclusions in violation of S.R. 1-1(a).

h. Based on subparagraphs a - g above, Respondent failed to identify the problem to be solved and include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (h), 2-2 (b)(vii), and the Scope of Work Rule.

i. Based on subparagraphs a - g above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly in violation of S.R. 2-1 (a)(b).

j. Based on subparagraphs a - g above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject property and the selected land and improved sales that resulted in communicating the assignment results in a misleading or fraudulent manner in violation of the Conduct Section of the Ethics Rule.

THE DESERT SHORES PROPERTY

97. On June 15, 2007 and January 3, 2008, Respondent prepared appraisal reports that involved the same two non-contiguous parcels of land for a proposed subdivision, known as Travertine Estates, situated at the southeast corner and southwest corner of Highway 86 and Avenue 86 in the Desert Shores area of Imperial County near Salton Sea[11]. The total land area consisted of 293 acres of vacant land zoned for open space. The owner was reportedly in the process of obtaining entitlements for commercial and residential development. There were no improvements on any of the parcels.

98. Respondent's appraisal report prepared on June 15, 2007[12] (hereinafter "DS-2") had an effective date of value of June 1, 2007. DS-2 was prepared for L.H. for the purpose of providing a value of land as collateral for lending purposes. DS-2 concluded the "as is" market value of the subject property was $14,830,000 and its "as if partially entitled" market value was $31,074,000. Respondent defined the term "'as if partially entitled' market value" as the present value with an approved Tentative Tract Map.

99. Respondent's appraisal report prepared on January 3, 2008[13] (hereinafter "DS-3") had an effective date of value of December 18, 2007. DS-3 was prepared for MKAC, a lender for the

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[11] Respondent prepared another appraisal report, referred to herein as "DS-1" with an effective date of value of January 18, 2006, however, this report was not available. The "as is" market value of the subject property in DS-1, as referenced in DS-2, was $9,014,000.

[12] The 2006 edition of USPAP is applicable to DS-2.

[13] The 2008 edition of USPAP is applicable to DS-3.

purpose of "possible financing." DS-3 concluded the "as is" market value of the subject property was $14,850,000 and its "as if entitled" market value was $15,891,000.

100. MKAC hired T.H.C. to appraise the subject property on or about July, 31, 2008 for the stated purpose of providing a "lender advisory on continuing a current loan." T.H.C. prepared an appraisal report on July 31, 2008 with an effective date of value of July 25, 2008. T.H.C.'s opinion of value was significantly less than Respondent's appraised values in his reports. T.H.C.'s opinion of value was $1,760,000 "as is."

Extraordinary Assumptions

101. According to DS-2 and DS-3, the scope of Respondent's assignment was to value the "as is" market value of the subject property, which Respondent defined as:

> In the "as is" scenario, the property will be appraised at whatever stage of development exists at the effective date of the appraisal.

102. In Respondent's Letter of Transmittal of DS-2, Respondent stated the appraisal was subject to the following hypothetical conditions, extraordinary assumptions,[14] and Highest and Best Use Assumptions:

- A hypothetical condition that the property has Tentative Tract Map approval for 636 SFR lots and 795 multi-family lots and an 18.58± acre commercial pad site as of the effective date of appraisal for analysis of the "AS IF PARTIALLY ENTITLED" Market Value (hypothetical condition);
- The potential for the subject property to be annexed to the Salton City Service District (SCSD) was discussed with SCSD manager, *** and LAFO [sic] (Local Agency Formation Commission) Director, ***. This discussion indicated the proposed annexation is reasonably probable and will allow the proposed development as indicated in this report. (Highest & Best Use Conclusion).

103. The Letter of Transmittal for DS-3 contained similar bullet points followed by the statement, "Otherwise, there are no other extraordinary assumptions or hypothetical conditions regarding this appraisal."

[14] An extraordinary assumption is an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions. USPAP 2006 Edition, page 3, line 82.

104. In the "Zoning" section of DS-2, Respondent stated that approval of the annexation of the subject property to the Salton City Service District and zoning for single family residential, multi-family residentail, neighborhood commercial and highway service commercial improvement, would be obtained within 12 months. This was an extraordinary assumption that Respondent did not clearly and conspicuously state in DS-2.

105. Respondent also did not clearly and conspicuously state how these extraordinary assumptions might affect valuation. DS-2 defined "market value 'as is'" as follows:

> MARKET VALUE "As Is" means an estimate of the market value of a property in conditions observed upon inspection and as it physically and legally exists **without hypothetical conditions, assumptions, or qualifications as of the date of inspection.** When an "As Is" valuation premise is used, the property is valued as of a specified date, assuming the property is in precisely the condition or status it actually was (is) in on the effective date of value. This condition must be accurately described in the appraisal report. (Emphasis added.)

106. Respondent's use of the extraordinary assumptions described in paragraphs 101 and 103 was misleading and contradicted the "as is" market value definition that he used in DS-2 and DS-3.

107. In addition, DS-2 and DS-3 erroneously represented the "as is" market value of 1,422 residential "paper lots." Respondent relied upon a "Draft" of an unsigned, non-binding Letter of Intent from L.H. to the property owner/seller dated February 14, 2006. The Letter of Intent was for the purpose of purchasing the property at a future date in June, 2008. The Letter of Intent set forth L.H.'s option to buy the property in stages, or "take downs," within 90 days of the seller obtaining an approved Tentative Tract Map. The purchase price offered for the subject property was 17.8 percent of the $225,000 price point L.H. hoped to sell each of the 1,200 "paper lots," or $40,000 per paper lot. The Letter of Intent set forth "Conditions to Close" that included the condition that the "Seller shall have obtained an 'Approved Tentative Tract May [sic]' for the development and construction of single-family homes on the Property." Respondent's work file contained a copy of the "Tentative Tract Map" that depicted a lot configuration that was different from that represented in Respondent's Report and the draft Letter of Intent. The Tentative Tract Map reflected only 636 paper lots for proposed single family residential development and three

lots containing a combined 786 high density residential units. The parcel sizes for the high density units were 6.35 acres, 9.66 acres and 40.14 acres, or 56.15 total acres.

108. Respondent's Reports did not state that the Draft Specific Plan and Tentative Tract Map for the subject property would have to be amended to accommodate "1,422 residential paper lots" and that this was an extraordinary assumption. This assumption was considered physically improbable since the 56.15 acres for the proposed high density residential lots would only accommodate 359 detached single family residential lots at a density of 6.4 dwelling units per acre. Utilizing a hypothetical paper lot scenario and the allowable density of 6.4 dwelling units per acre, the entire subject property would be limited to a total of only 995 paper lots that would be available for detached single family residential development. A condominium or high density residential development that would be marketed as individual units would require additional mapping for the individual units. This would conflict with the seller delivering "paper lots" under the terms of the unsigned Letter of Intent. Respondent did not properly analyze the draft Letter of Intent.

109. Respondent's DS-2 also did not address why the Letter of Intent remained unsigned 15 months after it was drafted or why L.H. had not approved the "Conditions to Close." DS-3 stated that L.H. "signed" a Letter of Intent on February 14, 2006, however this statement was unsupported. Respondent's Reports and his work file did not contain a signed copy of the Letter of Intent.

Regional Analysis

Salton Sea

110. Desert Shores was located along the northwest shore of the Salton Sea in northern Imperial County. DS-2 included a map labeled "Proposed Salton Sea Authority Master Plan (Plan)" that depicted a plan to restore the Salton Sea as a recreation and resort area by saving the northern half of the sea with a dam and allowing the southern half to become a shallow brine lake. DS-2 did not discuss the estimated costs and impediments associated with the proposed restoration plan. These costs had significantly increased, further delaying restoration efforts indefinitely. The costs for various restoration scenarios were publicized prior to the DS-2 report.

In 2003, the restoration cost was estimated at $1 billion. In 2007, the cost was estimated at $8.9 billion. Several articles were available as of the effective date of value of DS-2, but Respondent did not address these articles, the growing costs of restoring the Salton Sea or the uncertainty of obtaining funding. Respondent did not analyze how the uncertainty in restoring Salton Sea would affect the desirability and demand for residential and commercial development in areas surrounding Salton Sea.

Neighborhood Trends

111. Respondent's regional analysis in the "Summary of Important Facts and Conclusions" section of DS-2 stated:

> In the latter half of the first decade of the new century, the desert's favorable environmental, economic, social, and governmental forces will contribute to a high demand for real estate in the Coachella and Imperial Valleys. There is currently a good balance in land uses, a stable economic base, an adequate supply of labor, and a well-developed commuter transportation system. All of these factors make the area attractive to permanent residents and resort visitors. It is concluded that, over the next 6 to 9 months, mortgage money will become more scarce for financing developments from the raw land state. Demand for these properties should remain stable for the foreseeable future.

Respondent's statement regarding the stability of the demand for these properties was unsupported and conflicted with available market information.

112. Respondent's Trend Analysis contained in the "Summary of Important Facts and Conclusions" section of DS-3 report stated:

> The unincorporated area of Imperial County known as Desert Shores is very rural with an abundance of vacant lots and large parcels of land available for development. This area is in an emerging market. The Eastern Coachella Valley as well as Salton City had tremendous growth from 2002 thru 2006 **with median home prices reaching well above $375,000** (emphasis added) in 2006. Since 2006 there has been a slow down in the housing market due to the amount of new home inventory currently on the market. The Salton Sea Restoration Project and the new Torres Martinez Indian Casino built on the southern side of the Salton Sea, has caused continued potential development interest in the area. However, most vacant land parcels and proposed developments have been delayed until the current supply of new and resale homes have been absorbed approximately 12 to 24 months [sic].

113. DS-3 did not analyze relevant trends within the subject's immediate market area. DS-3 gave the impression that median prices in the area reached a high of $375,000. However, this statement was inaccurate because the price of $375,000 represented the median home price in

superior market areas. Price trends in the subject's, and its neighboring, zip codes would have given a more realistic and factual perspective as to the existing price levels.

114. The subject property was situated within the southerly portion of Thermal's zip code (92274), and was located within the southerly portion of Thermal directly south of the Riverside/Imperial county line. The median single-family home price in Thermal reached a high of $273,800 in May of 2006. Most of the sales activity within the Thermal zip code was within the Riverside County portion and closer to Coachella. The median single-family home price data for Thermal as of the date of value of DS-2 was $235,400 (June 2007). This reflected about a 14 percent drop from the market high. The median single-family home price data for Thermal as of the date of value of Respondent's DS-3 Report was $199,900 (December 2007). This reflected a further decline in market conditions, which was not addressed in Respondent's DS-3 Report.

115. Respondent's "Neighborhood Trend Analysis" in the "Summary of Important Facts and Conclusions" section of DS-3 also stated,

> The subject property is located in an emerging market at the Desert Shores area of the Salton Sea. Currently **there are new residential communities as well as a smaller commercial development approximately 10 miles to the south of the subject. However, there are no new developments in the subject's neighborhood.** The Salton Sea Restoration Project and the new Torres Martinez Indian Casino built on the southern side of the Salton Sea, has created new potential development interest in the area...It is concluded that property values in the subject's neighborhood should remain steady for the next 12 to 24 months. (Emphasis added.)

116. The DS-2 and DS-3 reports did not discuss the number of residential developments that were planned within the immediate market area or the areas surrounding the Salton Sea. The number of residential developments and existing lots were available material information that warranted disclosure and an adequate analysis. Respondent's claim as to "new residential communities and a smaller commercial development approximately 10 miles to the south of the subject property" was a gross overstatement and gave the impression development was active to the south and trending toward the subject property.

Nearby developments

117. Prior to the effective date of value for DS-3, there were three proposed developments near the subject property: Travertine Point, Kohl Ranch and the Blixseth properties. The subject

property was identified as Travertine Estates on the Travertine Point Project Map. Respondent's Reports did not refer to the proposed Travertine Point development, which was located directly to the north of the subject property. DS-2 and DS-3 did not refer to any existing or proposed developments.

118. The proposed development at Travertine Point was significant because it was substantially larger than the subject property and was further along in the entitlement stage than the subject property. Travertine Point was to encompass 12,300 residential units and approximately 346 acres of mixed-use development including various commercial and business park uses that were estimated to be built out over 40 years. Information regarding the development of Travertine Point was available prior to DS-3's date of value. The residential and commercial elements of Travertine Point represented a substantial potential inventory that warranted disclosure and analysis in Respondent's DS-2 and DS-3 reports. The proposed Travertine Point development was substantially larger than the subject property and would compete with the subject's proposed development. Since Travertine Point was further along in the entitlement process than the subject property, it would have severely impacted the market share and absorption of the subject property. All of the undisclosed proposed developments to the north of the subject property were anticipated to obtain a greater market share due to their closer proximity to employment centers in Riverside County and therefore should have been addressed in Respondent's reports.

119. DS-2 and DS-3 also did not address existing subdivisions to the south that would also compete with the subject's residential development. As of November 7, 2007, there were a total of 18,840 undeveloped recorded lots within various subdivisions that extended south into the Salton City area. Although some scattered residential development had taken place, the number of lots in this nearby area represented potential competition with the subject property for residential homes.

Tentative Tract Map and Entitlements

120. DS-2 stated that "...the subject property has been approved for annexation to the Salton City Community Services District, has a completed general plan, specific plan, [and]

environmental impact report ...." DS-2 further stated that the entitlement process at that time included completion of the phase I Environmental Report, approvals with "will serve" letters from all appropriate utility companies and agencies and that the Tentative Tract Map was completed and expected to be approved within 12 months.

120. DS-3 represented that the subject property was in the entitlement process for nearly a year and a half and was expected to be approximately halfway through to the full entitlement stage. DS-3 further represented that the general plan, specific plan, Tentative Tract Map, environmental report had been completed and had been submitted or were ready to submit.

121. Respondent's statements in DS-2 and DS-3 regarding the subject property's status in the entitlement process were unsupported, as were Respondent's representation that approval of annexation and the Tentative Tract Map would be completed within 12 months. Respondent did not address the reasonableness of the proposed time line to obtain entitlements. The proposed subdivision of the subject property was scheduled for a "Public Meeting" on November 15, 2007 as an "Informational & Scoping Input" item before the Imperial County Environmental Evaluation Committee. However, the agenda item never made it to the meeting and was never subsequently re-posted. Reportedly, it would take a minimum of 18 months for a project of the size proposed to go through the entitlement process.

122. Information within Respondent's work file, including an incomplete version of the Draft Specific Plan, indicated that the subject property was only in the initial stage of the entitlement process. The subject property never moved beyond the Draft Specific Plan stage. And, an Environmental Impact Report, which was required for obtaining entitlements, was never completed. A Final Environmental Report was required before any approvals could be obtained, as well as the submission of a Development Agreement and bonding to insure that the infrastructure was completed for the entire development. Respondent's work file did not contain a complete copy of the Draft Specific Plan or any more recent information pertaining to the status of entitlements.

123. Respondent's Reports indicated that "will serve" letters had been received by the owner from all appropriate utility companies and agencies. However, Respondents' reports did

not include any of the purported "will serve" letters. Indeed, the Salton Community Services District required the developer to install "complete service infrastructure for the development," which was to include sewer, water, electrical, phone system, cable TV, curbs, streetlights, sidewalks, streets, sewer main extension lines, including pumping stations. This information indicated that the subject property was not far along in the entitlement process. Therefore, Respondent's representations regarding the subject property's status in the entitlement process were unsupported.

Highest and Best Use

124. DS-2 report concluded that the Highest and Best Use "'As Is' as vacant land," was for "immediate development of the property as single family and multi-family lots with near future development of supporting neighborhood and highway retail as proposed." Respondent arrived at this conclusion after determining that the highest and best legally permissible use was "as is" for annexation to the Salton Community Services District "with a zone change to residential and commercial in conjunction with the entitlement process."

125. Unlike DS-2, DS-3 contained two Highest and Best Use senarios: the first was for "As Is Vacant Land" and the second was "As Proposed." In DS-3, Respondent concluded that the Highest and Best Use – "As Is Vacant Land," was for the property to hold for near future development (1-2 years) because current market conditions indicated that development of the subject property at the present time was not economically feasible.

126. In analyzing the Highest and Best Use "As Proposed" scenario in DS-3, Respondent noted that the subject property was located in an emerging market and was in the process of being annexed into the Salton Community Services District with an engineered tentative tract map that was in the process of being approved. Respondent determined that the highest and best use was to continue the entitlement process and then hold for near term development (1-2 years).

127. In Respondent's analysis of the highest and best legally permissible use in DS-3, Respondent noted that the property's General Plan use was Open Space and that as long as the property was in the unincorporated area of Imperial County, the zoning could not be changed. Respondent further stated that applications for annexation into the Santon Cummunity Services

District had been submitted by the developer. Respondent stated that anexation was reasonably probable and approval of the Tentative Tract Map was forthcoming.

128. DS-2 and DS-3 did not state that obtaining an approved tract map would be uncertain until the entitlement process was completed. There were discrepancies regarding the number of new homes mentioned in the Salton Community Services District letter to the developer (954 new homes in one paragraph and 1,267 residential units in another paragraph) and the actual number of residential lots indicated on the subject's Tentative Tract Map (636 single family residential lots and three multi-family zoned lots that had a potential for 786 multi-family units, for a total of 1,422 units). Respondent did not address these discrepancies in his analysis of whether the Highest and Best Use was "legally permissible."

129. Respondent also did not address the discrepancies in the number of lots in his analysis of whether the Highest and Best Use was "physically possible." As stated in paragraphs 107 and 108 above, Respondent's representation that the development would contain 1,422 lots was unsupported, as was his valuation based on the existence of 1,422 lots.

130. In Respondent's analysis of whether the Highest and Best use was "financially feasible" in DS-2, Respondent stated that the current market was "stable and may continue to be stable for the next 6 to 9 months with slight increases for inflation" and that "[i]mprovement of land as a residential development in this area is likely to be feasible in the near future as demand for housing continues to remain steady along the path of development." Respondent continued to state that "immediate or near future development of the subject property 'as proposed' is economically feasible with a cost of $54,041,000 and a bulk or wholesale value of $54,0009,000, which are virtually the same."

131. In Respondent's DS-2 and DS-3 reports, he did not analyze the effect of the immediate and ongoing competition from an existing inventory of approximately 18,840 undeveloped recorded lots situated south of the subject property in determining financial feasibility of the Highest and Best Use. Respondent also did not analyze the effect of competition from the proposed Travertine Point development, directly north of the subject property that would contain 12,300 residential units.

132. Respondent's statement in DS-2 that the market was, and would continue to be, stable for the next 6 to 9 months was unsupported in light of declining market trends for both finished lots and single family residences. Likewise, Respondent's statement in DS-3 that the market for vacant land remained stable and would continue to remain stable for the next 12 to 24 months was also unsupported.

133. Respondent's DS-2 and DS-3 reports indicated an initial pricing of $67,500 and $67,730, respectively per lot. These prices were unsupported by available market information. The lot sale history within the Desert Shore and Salton City areas indicated that the absorption of the subject residential lots at a reasonable price point was highly questionable, which would make financing for the proposed development difficult to attract. Also, the decline in median prices reflected uncertainty in whether a proposed development on the subject property would be economically feasible.

134. Respondent's representation of 1,422 residential lots was inaccurate and contributed to a false determination of financial feasibility in both the DS-2 and DS-3 reports by attributing sales income to 1,422 lots (at either $67,500 and $67,730 per lot) when 1,422 residential lots were not legally proposed or physically possible as set forth in the subject's Tentative Tract Map.

135. In Respondent's analysis of financial feasibility in the Highest and Best Use – As Proposed scenario in DS-3, Respondent referred to his Developer's Cost of Production Analysis. In the Cost of Production Analysis, Respondent stated that the Total Development Costs were $53,819,000 (including land and developer's incentive). Respondent's DS-2 report stated a Total Development Cost of $53,049,000. However, no developer's cost breakdown or analysis was contained in Respondent's DS-2 or DS-3 reports or work file. Overall, the basis for determining financial feasibility was unsupported.

Vacant Land Sales

Discrepancy in Reporting of Land Sales

136. In DS-3, Respondent used three land transactions to value the subject property's 293 gross acres:

	Address	Sales Date	Sales Price	DS-3 Report Reported Terms	Actual Terms
1	Buchanan St. & Ave. 72, Thermal	3/14/06	$3,700,000	"Conventional"	$3,100,000 by Private Party (Seller); 84% Loan to Value Ratio (LTV)
2	SWC Hwy 111 & Vander Veer Rd. North Shore	2/27/06	$1,100,000	"Cash"	$900,000 by Private Party (Seller); 82% LTV
3	Ave. 72 & Hwy. 86, Mecca	3/22/07	$6,500,000	"Cash"	$4,275,000 by Private Party (Seller); $112,500 by Private Party (Broker) 68% LTV (Combined)

137. Respondent represented two of the three sales as "Cash" transactions on the individual data sheets in DS-3. On the Adjustment Grid of DS-3, the financing for all three transactions was represented as "conventional" with the conditions of sale described as "arms length". However, in all three sales, the seller carried the primary financing. Therefore, these transactions were not cash terms to the seller and all three sales were misrepresented in DS-3. These sales were not reflective of "market value" for these lands sales and conflicted with Respondent's definition of "market value." According to DS-3, market value represented "the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale."

138. Land Sale No. 3 from DS-3 is the same as Sale No. 1 in DS-2. In DS-2, the financing terms for Sale No. 1 was stated as "None shown". DS-2 did not disclose that Sale No. 1 involved seller-carried financing.

139. Land Sale No. 2 from Respondent's DS-2 report reflected a sales price of $1,695,000. The grant deed indicated a documentary transfer tax of $1,155.00, computed on full value. This equated to a sales price of $1,050,000, which conflicted with Respondent's purported sales price of $1,695,000. Respondent's work file contained an MLS sheet for Land Sale No. 2 (which indicated a sales price of $1,695,000) and, attached to the MLS sheet, was a Win2Data Sheet for the same property that stated a sales price of $1,050,000 (based on full value). Neither Respondent's DS-2 report nor work file contained any comments or notations as to the discrepancy in prices. Respondent did not report the discrepancy within his own data and used the wrong sales price, which overstated the price paid by the buyer.

Adjustments to land sales

Location adjustments

140. Respondent's positive adjustments to the value of the subject property based on its location in comparison to the selected comparable land sales were unsupported. Overall, the selected sales were located in superior areas due to their closer proximity to centers of employment. Land Sale No. 2 in DS-3 was located adjacent to the Salton Sea with potential access and utilities from an adjacent subdivision. However, DS-3 stated the location of this sale was inferior to the subject's location and made a 10 percent positive adjustment to Land Sale No. 2's price. DS-3 also reported that the location of Land Sale Numbers 1 and 3 were inferior to that of the subject and also made a 10 percent adjustment for location.

141. As stated above, Land Sale No. 1 in DS-2 and Land Sale No. 3 in DS-3 were the same property. Respondent made no location adjustment for this property in DS-2 while DS-3 reflected a positive adjustment of 10 percent for the same property. Therefore the two reports were inconsistent with regard to location adjustments for the same property.

142. DS-2 indicated that the location of Land Sale No. 2 was inferior to the subject property and included a positive adjustment of $15,000 per acre, which was also unsupported.

View Adjustments

143. DS-3 included a positive view adjustment of 20 percent for all three land transactions based upon the subject's superior views. DS-3 stated Land Sale No. 2 had an inferior view, which was unsupported given this sale's proximity to the Salton Sea with potential development benefiting from various unobstructed views. Based upon the elevations depicted on the subject's Tentative Tract Map, only a small portion of the subject's potential residential lots had any notable view of the Salton Sea, with some of the views offset by the close proximity to State Highway 86. Overall, the view adjustments were not adequately supported.

Adjustments for Entitlements

144. DS-3 included an adjustment for entitlements. According to the Comparable Land Sales Grid Parcel in DS-3, the three comparable land sales did not have any entitlements while the subject property purportedly had an engineered Tentative Tract Map. Respondent made a

positive adjustment of $18,000 per acre for each of the sales having no entitlements. This translated to a cost of $2,196,000 to obtain entitlements for Land Sale No. 1; $702,000 to obtain entitlements for Land Sale No. 2; and, $5,534,820 to obtain entitlements for Sale No. 3. Respondent's adjustment of $18,000 per acre for land that was unentitled implied the subject property had a similar cost to obtain entitlements. Based on the subject's land area of 293 gross acres, this equated to an implied cost of $5,274,000 to obtain entitlements. The implied cost of entitlements of $5,274,000 was contrary to the total cost of entitlement of +/-$1,500,000, or $5,119 per gross acre, reflected in DS-2.

145. Vacant Land Sales Adjustment Grid ("As Is" Partially Entitled Market Value) in DS-2 included a $25,000 per acre adjustment to the three land sales for "zoning/tract map" since the subject purportedly had a Tentative Tract Map submitted. Based on Respondent's analysis of entitlement costs in DS-2, the subject property's cost of entitlements expended as of the date of the Report was approximately $2,509 per gross acre, which was substantially less than Respondent's adjustment of $25,000 per acre used in DS-2.

146. Both the $25,000 per acre adjustment in DS-2 and the $18,000 per acre adjustment in DS-3 were substantially overstated and unsupported.

Finished Residential Lot Sales – DS -2

147. Respondent's DS-2 report included four finished lot sales as comparable sales for the gross retail value of the residential lots in Respondent's Land Residual Analysis – Income Approach. Two purported sales transactions were from the North Shore area of the Salton Sea. Respondent concluded the value of the 1,422 residential lots was $95,985,000, which reflected an average price per finished lot of $67,500. Coincidentally, DS-2 indicated the development cost on a per lot basis was $27,250 per lot which, when combined with the price of $40,000 per paper lots (see paragraph 178), equaled a total price of $67,250 per lot.

148. The data sheet for Finished Residential Lot Sale No. 1 contained in DS-2, showed a sales price of $33,000 and a sales date of November 28, 2006. Although the MLS sheet from Respondent's work file indicated this was a sale, the Win2Data data sheet attached to the MLS sheet reflected no sale ever recorded. The purported sale predated the subject's date of value by

approximately six months and RealQuest information from Respondent's own work file indicated this purported sale never closed. Respondent's inclusion of this purported sale as a comparable sale was unsupported.

149. Respondent included as comparable in DS-2 Finished Residential Lot Sale Nos. 1 and 2, which were located in the North Shore area of the Salton Sea and were approximately 21 miles from the subject property. The inclusion of these comparable listings was inappropriate since there were closer and more recent finished lot sales located south of the subject property.

150. Respondent included as a comparable in DS-2 Finished Residential Lot Sale No. 2 sold on May 18, 2007. Respondent's data sheet for this sale indicated financing was "Conventional, details not shown". According to RealQuest information available at the time of DS-2, the lender provided a $33,750 conventional First Deed of Trust at an initial adjustable interest rate of 8.62 percent. The loan represented a 90 percent loan to value ratio, which was atypical for the market. Respondent's DS-2 report did not mention the terms of the sale with the favorable high loan to value ratio.

Market Conditions

151. Respondent made the following statement under the section "Finished Residential Sales Comparison, Market Conditions," in DS-2:

> There were no recent sales of finished vacant lots in the market area that were similar in size to the subject. Several sales in the subject's neighborhood were compared to the subject property and the most similar and most recent were selected for presentation in the report. All of the sales utilized are considered to have sold during market conditions similar to the current conditions and all of the sales sold within the window considered to be appropriate for the subject's estimated exposure time. A survey of comparable listings and interview with the agents indicates an increasing demand for residential sites in the subject's neighborhood.

152. Respondent included as comparables in DS-2 Finished Residential Lot Sale Nos. 3 and 4, which were located in the Salton City area with the data sheets reflecting dates of sale of April 20, 2007, and September 6, 2006, respectively. Although Sale Nos. 3 and 4 sold for $37,500 and $34,500, respectively, they were not reflective of market trends within the Salton City area. A review of residential lot sales in the Salton City area between January and May 2007 showed the availability of more recent sales of finished vacant lots. These sales, along with the

declining residential home values in more established areas of the Coachella Valley, reflected an overall declining value trend in residential lot values and did not support Respondent's statement that a survey of comparable listings indicated an "increasing demand for residential sites in the subject neighborhood".

Adjustments to Residential Lot Sales – DS-2

View Adjustments

153. Respondent's DS-2 report included a positive view adjustment of $15,000 for all four of Respondent's comparable finished lot sales. However, given the elevations depicted on the subject's Tentative Tract Map, only a small portion of the residential lots had any notable view of the Salton Sea, with some of the views offset by the close proximity to State Highway 86. The view adjustments for the residential lot sales were not adequately supported.

Amenities Adjustments

154. Respondent's Reports for Desert Shores represented that the property was a gated community and that the residential lots would have access to a clubhouse, community center and parks. In the Residential Finished Lot Sales Adjustment Grid in DS-2, Respondent noted that the comparable listings were inferior to the subject because the subject property had a private gated entry and therefore Respondent made a $4,500 positive adjustment to each of the finished lot sales. In addition, Respondent made a $15,000 adjustment per lot for the subject's amenities (clubhouse, community center and parks).

155. The Tract Maps contained in DS-2 and DS-3 and the Travertine Tentative Tract Map within Respondent's work file did not show any engineering for the purported gated community. Such engineering would typically include gated approaches for the residential areas and enlarged roadway areas suitable for gated entries. In addition, since a proposed K-6 school was located in the southwest quadrant of the proposed residential development, gated access for the residential subdivision was highly improbable.

156. The partial Draft Specific Plan in Respondent's work file did not mention a gated community for any of the single family residential areas. The partial Draft Specific Plan did mention gated access and amenities for the residents of each multi-family development. DS-2

and DS-3 erroneously implied the 1,422 residential lots were within a gated community that had amenities such as a recreation building and community pool. Respondent's positive adjustments to the selected sales that totaled about $19,500 per lot for private gated access and amenities were unsupported.

Lot Size Adjustments

157. Respondent's Reports indicated that the subject's average lot size was 6,537 square feet. Respondent made the following lot size adjustments in his reports:

	Lot Sale No.	Lot Size (sq. feet)	Adjustment
DS-2	1	7,405	0
	2	13,504	-$4,500.00
	3	16,985	-$4,500.00
	4	9,375	-$1,500.00
DS-3	1	10,000	-$15,000.00
	2	10,000	-$15,000.00
	3	10,000	-$15,000.00

The across the board lot size adjustments in Respondent's DS-2 and DS-3 reports were unsupported.

Allocation Methodology in DS-3

158. Based upon an average adjusted price per finished lot of $67,730, Respondent concluded in DS-3 that the value of the 1,422 residential lots was about $96,312,000. The average price per finished lot was allegedly based on the "Finished Lot Sales Comparison Grid" and the "Comparable Lot Sales Analysis". However, the "Finished Lot Sales Comparison Grid" and the "Comparable Lot Sales Analysis" were misleading because the values were not based on lot sales, but rather on an allocation[15] of lot values from sales of improved properties that occurred between September 2006 and June 2007. DS-2, completed approximately six months before DS-3, included two finished lot sales from the Salton City area. However, DS-3 did not

[15] Allocation is defined as: "1. The general process of separating value between the component parts of a property. 2. A method of estimating land value in which sales of improved properties are analyzed to establish a typical ratio of land value to total property value and this ratio is applied to the property being appraised or the comparable sale being analyzed." The Dictionary of Real Estate Appraisal, 4th Edition, page 10.

include any finished lot sales and instead used an allocation method to calculate the finished lot value. The "Sales Comparison" section of DS-3 did not explain why sales of finished residential lot sales were not used but rather an allocation method was used to calculate finished lot value.

159. In addition, the first "sale" that Respondent used in his allocation method never occurred. Respondent misrepresented the sale date of the second "sale", did not adequately analyze the terms of that sale and had no documentation in his work file regarding this sale. Likewise, Respondent misrepresented the sale date of the third sale, did not adequately analyze the sale and had no documentation in his work file regarding this sale.

160. Respondent's use of the allocation method was inappropriate to provide a formal opinion of value of the subject property when comparable land sales in the immediate area were available. Respondent's lot value conclusion was unsupported by direct market evidence, which included 40 lot sales closing between January 2007 and June 2007 and 22 lot sales closing between June 2007 and December 2007. Respondent also inappropriately made further adjustments to the allocated land values and the adjustments themselves were unsupported.

161. DS-3 included a positive view adjustment of $7,500 and a positive amenities adjustment of $20,000 for each of the allocated lot values in DS-3, which are unsupported.

Land Residual Analysis

162. Respondent's assumptions in the "Land Residual Analysis" sections of DS-2 and DS-3 regarding the 1,422 residential "paper lots" were unsupported. The unsigned Letter of Intent specifically mentioned "paper lots". The Tentative Tract Map showed 636 "paper lots" and three larger parcels that were for high density residential development. The three parcels were to contain 89, 135 and 562 proposed high density residential units, respectively, or a total of 786 units. However, the Tentative Tract did not delineate the 786 high density residential units within these three high density residential parcels as individual "paper lots." Therefore, Respondent's assumption that there were a total of 1,422 paper lots (636 + 786) was unsupported. Market participants would distinguish between the "paper lots" and the three larger parcels planned for high density residential development.

/ / /

163. Respondent's DS-2 report stated:

> The smaller undivided multi-family lots would sell for less per lot and the larger single family lots would sell for more per lot. The per lot average considered in the analysis is $67,500. This value produces an average price point of $225,000 per home which is considered approximate for the subject district considering that the majority of homes are multi-family residences.

DS-3 used an initial price per lot of $67,730, slightly higher than the per lot value in DS-2. Respondent's blending of the residential lot values and multi-family residential units in his reports were unsupported.

Estimation of Absorption Period

164. DS-2 reported that there were currently over 35,000 new homes in the planning or construction phase of development in the Indio/Coachella area. Respondent stated that the rate of absorption for single family residences was from five to seven per month. In DS-3, Respondent stated the rate of absorption for finished lots similar to the subject's proposed lots was from five to ten per month. Neither Respondent's DS-2 and DS-3 reports nor work file provided adequate analysis or support for the respective absorption rates.

Cost of Production Analysis

165. DS-2 and DS-3 contained a "Cost of Production Analysis" that purportedly analyzed the developer's building costs. DS-2 broke down the developer's hard costs into entitlement costs remaining to be paid, costs to finish 636 vacant single family lots, and costs to finish 786 vacant multi-family lots. In DS-2, Respondent reported total development costs (hard and soft costs) of $33,339,276, or an average cost of $23,445 per lot. DS-3 combined the cost to finish all "1,422 finished residential lots" without distinguishing between the multi-family units and the single family residential lots. In DS-3, Respondent reported total development costs (hard and soft costs) of $34,148,000, or an average cost per lot of $24,014. Respondent did not provide any supporting documentation for the cost estimates he used in determining production costs, nor an explanation as to the difference in production costs between DS-2 and DS-3.

166. In Respondent's "Discounted Cash Flow Analysis for the 'As-Is" Market Value" in DS-2, Respondent had separate line items for developer profit related to development costs (totaling $3,244,546 over 20 years) and developer profit related to land costs (totaling $1,488,697

over 19 years). In his "Discounted Cash Flow Analysis" for the "As Is" Market Value in DS-3, Respondent had a separate line item for "Developer's profit" and "Developer incentive." The "Developer incentive" was $3,000,000 paid out over 13 years, starting in the fourth year of sales, which was the year that sales were anticipated to commence. The "Developer profit" of $4,805,000, was to be paid out over the first three years, which were the years prior to the commencement of sales. Typically, profit is not earned until the lots are successfully sold. Respondent's modeling of developer's profit in DS-3 was erroneous.

167. The discount rates (D.R.) used by Respondent in DS-2 and DS-3 are shown below for the various scenarios:

	DS-2 REPORT		**DS-3 REPORT**	
Scenario:	**D.R.**	**Value**	**D.R.**	**Value**
"As Is" In Entitlement Process:	15.50%	$14,830,000	11.00%	$14,857,000
"As If" Tentative Map is Approved:	8.50%	$31,074,000	13.00%	$15,891,000
"As If Complete" Bulk or Wholesale:	7.00%	$53,085,000	14.00%	$37,799,000

168. A higher discount rate reflects higher risk and uncertainty. The discount rates used in DS-2 and DS-3 were contradictory. The discount rates used in DS-2 decreased when moving from the "as is" scenario in the entitlement process to the "as if complete" scenario. The decrease in discount rates in DS-2 implied a decrease in risk and uncertainty. In DS-3, the discount rates increased from the "as is" scenario to the "as if complete" scenario. The increase in discount rates reflected increased risk and uncertainty when moving from the "as is" scenario to the "as if complete" scenario. The level of risk and uncertainty is expected to be greater as a project moves through a long development timeframe where competition is anticipated to increase. Therefore Respondent's use of decreasing discount rates in DS-2 was unsupported. While the use of increasing discount rates in DS-3 was appropriate, the specific discount rates selected by Respondent in DS-3 were unsupported.

169. The "As If Complete" discount rate of 7 percent utilized in DS-2 was unsupported and did not account for the various risks and uncertainties associated with constructing the

improvements and sale of the lots to a merchant builder. Respondent's use of a low discount rate of 7 percent in DS-2 accounted, in part, for the $53,085,000 valuation as opposed to Respondent's valuation of $37,799,000 under the same scenario in DS-3.

170. Respondent's Discounted Cash Flow analyses in DS-2 and DS-3 were faulty and were unsupported. The analyses erroneously used the value of $67,750 per lot for 1,422 lots; used an unsupported rate of absorption, unsupported pricing and costs, and unsupported discount rates.

FIFTH CAUSE FOR DISCIPLINE

(Violations of 2006 USPAP – DS-2)

171. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Desert Shores Appraisal Report No. 2 (DS-2) that Respondent prepared on or about June 15, 2007. DS-2 was for a proposed subdivision known as Travertine Estates, situated at the southeast corner and southwest corner of Highway 86 and Avenue 86 in the Desert Shores area of Imperial County, California. Respondent's license is subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 97 – 170 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify relevant property characteristics of the subject property, including misrepresenting the proposed development as containing 1,422 paper lots, when in fact the Tentative Tract Map reflected 635 lots for single family residences and three lots that had the potential for 786 multi-family residential units; misrepresented the proposed subdivision as a gated community; misrepresented a Letter of Intent as being signed and failed to analyze the terms of the Letter of Intent; misrepresented market conditions as stable, when there was evidence that reflected a downward trend in values; and, failed to identify and analyze market conditions, which included approximately 18,840 existing residential lots located to the south of the subject property and a proposed master planned community located to the north of

the subject property that was reportedly to contain 12,300 residential units when completed. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent misrepresented a Letter of Intent as being signed and failed to adequately analyze the terms of the Letter of Intent, which included as a "Conditions to Close" that the Seller obtain an Approved Tentative Tract Map for the development and construction of single-family homes on the property, in violation of S.R. 1-1 (b), and 2-1 (a).

c. Respondent's determination of highest and best use was based upon a faulty analysis that was based on 1,422 paper lots and failed to consider existing and potential competition in the immediate market area. Respondent failed to support his value estimate for the subject's finished lots and the selection of discount rates as utilized in his Land Residual Analysis. Respondent's Report conclusion and representations of highest and best use in DS-2 were not supported by the legal permissibility, physically possible, financially feasible, or maximum profitability considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(ix).

d. Respondent's sales comparison approach for the gross acreage included various transactions with one reported as a cash transaction that actually involved substantial seller financing. Respondent represented the market as stable and included unsupported upward adjustments for location, view and entitlements. Respondent's finished lot valuation section misrepresented the availability of finished vacant residential lots in the subject's marketing area and included dated transactions when more recent and proximate sales were available and indicative of market value. Respondent failed to adjust for declining market conditions and included unsupported upward adjustments for view and amenities. As a result, Respondent failed to provide adequate support for the various value conclusions in violation of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(viii).

e. Respondent failed to develop a credible opinion of site values and failed to analyze relevant cost data to support the cost if new of the proposed subdivision improvements, resulting in a misleading report and an unsupported valuation in violation of S.R. 1-4 (b)(i)(ii), and 2-2 (b)(viii).

f. Respondent failed to develop a credible opinion of potential earnings, which was based in part on 1,422 residential lots; failed to provide adequate support for his various rates of discount; and, failed to support projections of future income potential on reasonably clear and appropriate evidence. These are violations of S.R. 1-4 (c)(i)(iii)(iv), and 2-2 (b)(viii).

g. Respondent failed to provide sufficient and relevant information pertaining to the quality and quantity of data available and analyzed within the various approaches and reconciled to unsupported value indications when market information was available that conflicted with the final value estimate. These are violations of S.R. 1-6 (a)(b), and 2-2 (b) (viii).

h. Based on paragraphs a - g above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and provide the reasoning that supported the analyses, opinions, and conclusions in violation of S.R. 1-1(a).

i. Based on paragraphs a - g above, Respondent failed to identify the problem to be solved and failed to include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (h), 2-2 (b)(vii), and the Scope of Work Rule.

j. Based on paragraphs a - g above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly in violation of S.R. 2-1 (a)(b).

k. Based on paragraphs a - g above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject property and the selected land sales that resulted in communicating the assignment results in a misleading or fraudulent manner in violation of the Conduct Section of the Ethics Rule.

SIXTH CAUSE FOR DISCIPLINE

(Violations of 2008 USPAP – DS-3)

172. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Desert Shores Appraisal Report No. 3 (DS-3) that

Respondent prepared on or about January 3, 2008. DS-3 was for a proposed subdivision known as Travertine Estates, situated at the southeast corner and southwest corner of Highway 86 and Avenue 86 in the Desert Shores area of Imperial County, California. Respondent's license is subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 97 – 170 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify relevant property characteristics of the subject property, including misrepresenting the proposed development as containing 1,422 paper lots, when in fact the Tentative Tract Map reflected 635 lots for single family residences and three lots that had the potential for 786 multi-family residential units; misrepresented the proposed subdivision as a gated community; misrepresented a Letter of Intent as being signed and failed to analyze the terms of the Letter of Intent; misrepresented market conditions as stable, when there was evidence that reflected a downward trend in values; failed to identify and analyze market conditions, which included approximately 18,840 existing residential lots located to the south of the subject property and a proposed master planned community located to the north of the subject property that was to contain 12,300 residential units when completed. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent misrepresented a Letter of Intent as being signed and failed to adequately analyze the terms of the Letter of Intent, which included as a "Conditions to Close" that the Seller obtained an Approved Tentative Tract Map for the development and construction of single-family homes on the property, in violation of S.R. 1-1 (b), and 2-1 (a).

c. Respondent's determination of highest and best use was based upon a faulty analysis that was based on 1,422 paper lots and failed to consider existing and potential competition in the immediate market area. Respondent failed to support his value estimate for the subject's finished lots and the selection of discount rates as utilized in his Land Residual Analysis. Respondent's Report conclusion and representations of highest and best use were not supported by the legal permissibility, physically possible, financially feasible, or maximum

profitability considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(ix).

d. Respondent's sales comparison approach for the gross acreage included various transactions with one reported as a cash transaction that actually involved substantial seller financing. Respondent represented the market as stable and included unsupported upward adjustments for location, view and entitlements. Respondent's finished lot valuation section misrepresented the availability of finished vacant residential lots in the subject's marketing area and included dated transactions when more recent and proximate sales were available and indicative of market value. Respondent failed to adjust for declining market conditions and included unsupported upward adjustments for view and amenities. As a result, Respondent failed to provide adequate support for the various value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(viii).

e. Respondent failed to develop a credible opinion of site values and failed to analyze relevant cost data to support the cost new of the proposed subdivision improvements, resulting in a misleading report and an unsupported valuation in violation of S.R. 1-4 (b)(i)(ii), and 2-2 (b)(viii).

f. Respondent failed to develop a credible opinion of potential earnings, which was based in part on 1,422 residential lots; failed to provide adequate support for his various rates of discount; and, failed to support projections of future income potential on reasonably clear and appropriate evidence. These are violations of S.R. 1-4 (c)(i)(iii)(iv), and 2-2 (b)(viii).

g. Respondent failed to provide sufficient and relevant information pertaining to the quality and quantity of data available and analyzed within the various approaches and reconciled to unsupported value indications when market information was available that conflicted with the final value estimate. These are violations of S.R. 1-6 (a)(b), and 2-2 (b) (viii).

h. Based on paragraphs a - g above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal and failed to provide the reasoning that supported the analyses, opinions, and conclusions in violation of S.R. 1-1(a).

i. Based on paragraphs a - g above, Respondent failed to identify the problem to be solved and failed to include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (h), 2-2 (b)(vii) and the Scope of Work Rule.

j. Based on paragraphs a - g above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly in violation of S.R. 2-1 (a)(b).

k. Based on paragraphs a - g above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject property and the selected land sales that resulted in communicating the assignment results in a misleading or fraudulent manner in violation of the Conduct Section of the Ethics Rule.

BOMBAY BEACH PROPERTIES

173. On or about November 8, 2005, Respondent completed a real estate appraisal report for various parcels of raw land totaling 1,551.75 acres near the vicinity of Bombay Beach, which was located along the easterly portions of Salton Sea, California. The November 8, 2005[16] appraisal report (hereinafter "BB-1") had an effective date of value of November 4, 2005. Respondent's opinion of value was $21,355,000.00.

174. On June 19, 2006[17], Respondent completed another appraisal report for the same parcels of raw land (hereinafter "BB-2") that was intended to be an "updated" appraisal of the "as is" market value of the subject properties. The effective date of value was June 16, 2006 and Respondent's opinion of value was $24,054,000.00.

175. The intended user of both reports was S.L.D., a developer, for the purpose of obtaining financing.

[16] The 2005 edition of USPAP is applicable to BB-1.
[17] The 2006 edition of USPAP is applicable to BB-2.

176. Respondent omitted information in his reports that distorted the underwriting risks, where if disclosed, would have presented an impediment to obtaining a loan. Respondent ignored available local market transactions that represented data that was more indicative of values within the Bombay Beach market area. Respondent misrepresented various existing legal characteristics of the subject properties and included sale transactions that were not reflective of the market value of properties within the Bombay Beach area which, in the aggregate, resulted in a gross overvaluation of the subject properties.

177. The subject properties consisted of 17 assessor parcels, with different zoning, that Respondent identified in his reports as four parcels, totaling 1,551.75 acres. In the description of the subject properties' sales history in the "Factual Data" section, Respondent stated in BB-1:

> [T.W.] went into escrow May 19, 2005 to purchase the entire 7,800 acres from [P.S.] for $21,833,000 or $2,799 per acre.

BB-1 did not identify the status or conditions of the escrow. Other than a two page Addition or Amendment (Amendment) to the Escrow Instructions dated September 6, 2005, Respondent's work file contained no information on this escrow or sale. In the September 6, 2005 Amendment, T.W. designated S.L.D., LLC as the Buyer and P.S. accepted S.L.D., LLC as the Buyer. About two months later on November 21, 2005, a grant deed was recorded showing title to the subject properties (not the entire 7,800 acres) transferred from P.S. to S.L.D., LLC. A Document Transfer Tax of $4,730 was reflected on the grant deed, which indicated a reported sales price of $4,300,000 for the subject properties. The sales price reflected a unit price of $2,771 per acre. In BB-1 and BB-2, Respondent also did not adequately comment on the status of the sale of the subject properties and the terms of the sale.

178. Respondent stated in BB-1 that the difference in value between the escrow price of $2,799 per acre and Respondent's appraised value of $13,762 per acre was due to increasing market conditions for land in the subject's district since the time subject properties went into escrow. This statement was unsupported and implied market conditions increased 492 percent in less than six months (May 19, 2005 and November 8, 2005).

179. Respondent's reports also did not adequately identify and analyze a prior sale of the subject properties that was recorded on August 23, 2004 for a price of $2,989,000. This prior transaction reflected a total of 30 parcels that totaled 2,310 gross acres. The property sold consisted of all of the subject parcels except for one parcel, and also included 14 other parcels, which were not a part of the subject properties. According to the land areas indicated on the assessor map pages, this prior sale equated to a unit value of $1,294 per gross acre. Respondent did not report and analyze this prior sale of the subject properties in BB-1 and BB-2.

Location Characteristics

180. The subject properties were in an unincorporated community known as Bombay Beach in Imperial County, with a population of 366 residents in 2006. There were less than 500 residents within a 5-mile radius of Bombay Beach. Population was growing at a rate of about six percent per year. The median household income in 2006 was about $25,000 per year.

181. As stated in paragraph 109 above, the Salton Sea Restoration Plan envisioned restoring the Salton Sea as a recreation and resort area by creating a dam across the lake to preserve the northern half of the sea as a recreational salt-water lake while allowing the southern half to become a shallow salt sink and salt tolerant vegetation area. If the Restoration Plan was approved, financed and constructed, the area surrounding the smaller salt-water lake to the north and west would be enhanced but areas to the south, such as Bombay Beach and the subject properties, would be negatively impacted due to the creation of, and close proximity to, the newly created salt sink area. Respondent did not adequately analyze the impact of the proposed Salton Sea Restoration Plan on the subject properties.

182. BB-1 stated that a small portion of Parcel No. 1 of the subject properties was located within a 100 year floodplain. BB-1 stated that a small portion of Parcel No. 4 of the subject properties was located in a "floodway area." Flood Maps of the area showed that Parcel No. 1 was within Zone A, defined as "areas of 100-year flood" but base flood elevations and flood hazard factors had not been determined. Flood Maps also showed that various substantial portions of Parcel No. 4 were also located in Zone A, negatively impacting the development

potential of Parcel No. 4. BB-1 mischaracterized and understated the impact of the 100-year flood zone on the various parcels that made up the subject properties.

183. In BB-1, Respondent stated that the property was being appraised with the assumption that the property had no easements or encroachments that negatively impacted the value of the property. Parcel No. 4 was negatively impacted by an easement to maintain an existing levee and ditches and to construct and maintain any future levee and ditches. This information was set forth in a Title Report contained within Respondent's work file.

184. BB-1 and BB-2 did not identify the location of the Alquist-Priolo earthquake zone (fault rupture zones) in relation to the various subject's parcels and did not consider the impact on the subject's development potential.

Subject Property Characteristics

185. As stated above, the subject properties consisted of four non-contiguous parcels of vacant land, totaling 1,551.75 acres. Respondent's Reports did not identify and analyze the locations, and the impact on potential development, of the various parcels, which were situated adjacent to a variety of publicly owned lands. Parcel Nos. 2 and 3 were situated in areas where the adjacent private land had been previously divided into parcels containing between 5 to 40 acres. Because the subject properties were non-contiguous, and there were existing parcels between the noncontiguous parcels under private ownership, development of the area would be more difficult. Parcel No. 3 was bounded on the north and west sides by government owned land, which essentially land locked this subject parcel on two sides.

186. State Highway 111 extended around the easterly portion of the Salton Sea. Directly north of State Highway 111, in the vicinity of Bombay Beach, was the Southern Pacific Rail. The width of the land owned by Southern Pacific was 200 feet, which would have posed access issues to Parcel Nos. 1 and 4 of the subject properties as these parcels were directly north of the existing railroad line. Respondent's Reports made no mention of the existing railroad line, which was a detriment for potential residential development and diminishes access.

187. Respondent's work file included an exhibit that identified the legal descriptions for the subject properties' various assessor parcel numbers. This exhibit preceded a Preliminary Title

Report that was prepared by Orange Coast Title Company dated June 23, 2005. There were Exceptions within the legal descriptions for the subject's various parcels that were not disclosed or addressed in BB-1 or BB-2. The Exceptions within the legal descriptions included various mineral rights with "right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for any and all oil, gas, minerals and mineral substances and removing same therefrom". This, and similar clauses, in the Exceptions impacted Respondent's Parcel Nos. 1 and 4 by approximately 280 and 240 acres, respectively. Respondent's reports did not disclose the Exceptions that were contained within the legal descriptions for the subject properties, which were a part of Respondent's work file.

General Plan and Zoning

188. Respondent stated in BB-1 that the General Plan designation for the "four" parcels was "Specific Plan Zone Area" and identified the Specific Zoning for the parcels as "S-2 Open Space Preservation." Respondent's General Plan and zoning designations for the parcels that comprised the subject properties were incorrect. The correct General Plan designations for the four parcels varied between "R-OS" (Recreational-Open Space), "LDR" (Low Density Residential), and "GC" (General Commercial). The correct zoning varied between "S-1" (Recreational/Open Space), "R1-L1" (Single Family Residential- one dwelling unit per legal lot-1 acre minimum), and "C-2" (Medium Commercial).

189. Respondent made errors in performing his scope of work in that he did not identify relevant information necessary for his client to be properly informed and not misled. According to BB-1, Respondent described his scope of work as including:

> A preliminary search of available resources was made to determine market trends, influences, and other significant factors pertinent to the subject property.

BB-1 and BB-2 did not include relevant characteristics about the subject including the land locked nature of some of the parcels, respective specific zoning classifications and General Plan classifications, earthquake and flood hazards areas, and railroad influences. The omission or understatement of theses items from Respondent's BB-1 and BB-2 reports was considered misleading to the client and intended users of the Reports.

Highest and Best Use

190. Respondent concluded in BB-1 that the highest and best use for the subject properties was to assemble Parcel Nos. 2 and 3 with contiguous parcels and hold for future development. He concluded Parcel Nos. 1 and 4 should be sold separately and held for future development. Respondent's conclusion of highest and best use was inaccurate and not adequately supported.

191. In the "Legally Permissible" section of Respondent's Highest and Best Use Analysis in BB-1, Respondent described the property's general plan use as "Specific Plan Zone Area" and stated "the subject property would require a specific plan to be approved by the county in order to rezone the subject property and start the development process." However, Respondent did not describe and comment on the actual General Plan designations, which resulted in an erroneous representation. As of the date of value for Respondent's Reports, the General Plan specifically designated Parcel Nos. 1, 2 and 3 and portions of 4 as Recreational/Open Space, not a "Specific Plan Zone Area" as Respondent stated. Any proposed Specific Plan would also require a change in the General Plan.

192. The Exceptions within the legal descriptions for the various subject parcels included various mineral rights with "right of ingress and egress at all times for the purpose of mining, drilling and exploring said land for any and all oil, gas, minerals and mineral substances and removing same therefrom". This clause and similar clauses impacted Respondent's Parcel Nos. 1 and 4 by approximately 280 and 240 acres, respectively. Respondent's reports did not disclose or comment about the Exceptions in the legal description, even though the information was contained in Respondent's work file. Therefore, Respondent's conclusion regarding the legal permissibility of future development was unsupported.

193. Respondent also concluded in BB-1 that his highest and best use determination of future development was physically possible. Respondent stated that, "Although the subject property's parcels are not contiguous, the size of the individual parcels would not be a detractor for individual development of each parcel." Respondent did not address the varying physical characteristics of the subject properties' individual parcels, including adjacent public and private ownerships, various flood zone configurations, partitioning by various watercourses, location of

existing railroad line and related easements, and location within an Alquist-Priolo Special Studies (earthquake fault rupture) Zone. These characteristics presented a variety of physical impediments to development that Respondent's reports did not address.

194. Respondent determined that his highest and best use conclusion was also financially feasible however, Respondent did not adequately address local trends including demand, and omitted any discussion of available land sales within the Bombay Beach/Hot Mineral Spa market that reflected more recent transactions. These available sales reflected a sharp contrast in land values between the available land sales and those selected by Respondent in his reports. Respondent also did not analyze a variety of physical impediments that severely diminished the financial feasibility of developing the subject properties.

195. The BB-1 report stated:

> The subject site is located in an immerging [sic] market, in the path of development. Due to the fact that the subject's 4 parcels are not contiguous, the maximally productive use would be to hold for future development and possible assemblage.

Respondent's statement above that the subject site was located in an emerging market was unsupported. Given the remote location of the Bombay Beach area, even in light of the proposed restoration plan of the Salton Sea, demand for housing was limited over the long term. Further, the development impediments discussed above seriously impacted the use and desirability of the subject's various respective parcels.

Sales Comparison Approach

196. Respondent's BB-1 and BB-2 reports used the same three land sale comparables for both reports. The land sales selected by Respondent were located around the northerly portions of the Salton Sea and were closer to areas where development activity would first occur in comparison to the Bombay Beach area where the subject's noncontiguous parcels were located. The land sales selected by Respondent were:

Sale No.	Location \ Buyer & Seller	Recording Date	Zoning	Sales Price	Acres	Price/ Acre
1	Avenue 86 & Hwy 86 Desert Shores, CA	3/1/2005	A-2	$8,400,000	336	$25,000

	Buyer: [R.G.P., LLC] Seller: [B.E.P., LLC]					
2	70750 Hayes Avenue Thermal, CA Buyer: [P.T.R.E.H., LLC] Seller: [S.S.E., LLC]	8/30/2005	A-1-20	$3,428,000	171.4	$20,000
3	Avenue 78 & Polk Street Mecca, CA Buyer: [P.P., LLC] Seller: [D.E. Inc.]	3/1/2005	A-1-20	$1,775,000	58.17	$30,514
Zoning: A-2 (Imperial County) A-1-20 (Riverside County)						

Respondent's Land Sale No. 1

197. Respondent's Land Sale No. 1 was located at Avenue 86 and Highway 86 in Desert Shores and reflected a recording date of March 1, 2005, with a sales price of $8,400,000. Respondent's reports indicated Land Sale No. 1 involved a total of 336 acres, at a per acre price of $25,000.

198. Land Sale No. 1 consisted of several non-contiguous property clusters located in Riverside and Imperial Counties, approximately 38 miles northwest of the subject properties on the westerly side of the Salton Sea. BB-1 represented the use of Land Sale No. 1 at the time of sale as "Agricultural Land –Table Grape Vineyards" with the Highest and Best Use as "Interim Use as Agriculture: Hold for future development". (The portion of this sale located in Imperial County was located directly adjacent to the previously described Desert Shores subject property and was part of the larger proposed Travertine Point development.) Respondent commented that Land Sale No. 1 was "...currently improved with vineyards. Most properties in this area are being used as agriculture land as an interim use or being held for future development." Aerial imagery of the Riverside portions indicated the acreage included a variety of improvements that were associated with farming operations along with a substantial residence.

199. Respondent erroneously represented this Land Sale No. 1 as an arms length market transaction for a fee simple interest. However, the transaction was actually a transfer between various corporate entities controlled by the same corporation. In addition, the transfer was for "an

undivided **90% interest**" in the described properties. Respondent did not sufficiently analyze this transfer, a prior transfer involving Land Sale No. 1 that recorded on the same date, and the terms of that sale.

200. Respondent's Reports also represented the acreage for this purported market transaction as consisting of 336 gross acres. However, the total land area for this transaction was 684.15 acres. Respondent's documentation for Land Sale No. 1 indicated a total of 16 Assessor Parcel Numbers (APN's) for this transfer with five parcels located in Riverside County. Respondent's data page within BB-1 only reflected eleven parcels within Imperial County and omitted the five parcels situated in Riverside County. The land area for the parcels in Riverside County totaled approximately 348.15 net acres. Respondent grossly understated the acreage for his purported Land Sale No. 1 as 336 acres.

Respondent's Land Sale No. 2

201. Respondent's reports stated Land Sale No. 2 was located in Thermal, California and reflected a recording date of August 30, 2005, with a sales price of $3,428,000. Respondent's reports indicated Land Sale No. 2 involved a total of 171.4 acres, or a per acre price of $20,000.

202. Land Sale No. 2 was actually located in Mecca, California in Riverside County, just south of Highway 111. It was approximately 23 miles northwest of the subject properties at the northerly end of the Salton Sea. BB-1 represented the use at the time of sale as "Farmed Citrus" with the Highest and Best Use as "Interim Use Agriculture: Hold for future development".

203. Respondent identified his source of verification of Land Sale No. 2 as "Metroscan: Co-star Comps: Buyer". Other than Respondent's report, Respondent's work file did not contain any information pertaining to this purported sale. A search of CoStar data for this reported sale by address, assessor parcel numbers and cross street yielded no information on this purported sale.

Respondent's Land Sale No. 3

204. Respondent's reports stated Land Sale No. 3 was located in Mecca, California and reflected a recording date of March 1, 2005, with a sales price of $1,775,000. Respondent's reports indicated Land Sale No. 3 involved a total of 58.17 acres, or a per acre price of $30,514.

205. Land Sale No. 3 was actually located in Thermal, California in Riverside County, just south of Highway 111. It was approximately 36 miles northwest of the subject properties and west of the Salton Sea. This sale was located between the noncontiguous parcels that Respondent represented as Land Sale No. 1. and was acquired as part of an assemblage, which Respondent's Report did not mention. BB-1 represented the use at the time of sale as "Citrus Ranch with miscellaneous out buildings" with the Highest and Best Use as "Agriculture as interim use". Respondent's comments concerning this sale stated, "This property is currently improved with date trees", which contradicted Respondent's stated use as a citrus ranch. BB-1 identified his source of verification for this sale as "Metroscan; Desert Area CIE; Desert Pacific Properties." However, other than Respondent's Report, his work file contained no supporting information.

Respondent's Sale Adjustments in BB-1

206. BB-1 contained a sale adjustment grid for each of the four parcels that reportedly constituted the subject properties. Respondent compared each parcel with Land Sales No. 1, No. 2 and No. 3.

207. Respondent described the location of each subject parcel as "Average" and each of the Sales as "Similar." Respondent did not make adjustments for the far superior locations of the sale properties. Sales closer to the vicinity of the subject properties indicated lower sales prices on a per acres basis in the Bombay Beach area than in areas to the west and north of the Salton Sea. As such, the subject's location near Bombay Beach was inferior to all three of the selected sales.

208. Respondent adjusted Sale Nos. 2 and 3 upward 15 percent for their inferior view, which was atypical and unsupported by properties within the subject's immediate market.

209. Respondent adjusted all three Sales downward 10 percent since they were being farmed. Although this adjustment was in the right direction, the magnitude of the adjustment was understated and unsupported. Respondent's selection and inclusion of distant sales that included agricultural uses was highly questionable in light of available local market information.

210. Respondent adjusted all three sales downward 15 percent because of the availability of off-site improvements, which the subject properties did not have. Water for new subdivisions

in the Bombay Beach area would require the development of a substantial infrastructure. Water to the Bombay Beach area was being provided by a transmission main from the Mecca area but was currently at capacity. This would negatively impact any proposed subdivisions on the subject properties. Given the subject's distance from potable water (required for further subdivision of the land) and the cost of extending water mains to Bombay Beach, Respondent's adjustment for off-site improvements was understated and not supported.

Respondent's Sales Comparison Approach in BB-2

211. BB-2 only summarized the same sales from BB-1 in the section entitled "Sales Comparison Approach" and included the statement:

> Three sales of similar land in the subject's district were analyzed. These sales occurred within the last 12-15 months. The sizes ranged from 58.17 to 336 acres. When minor adjustments were made for view, access, on and off-site improvements, the sales indicated aggregate retail for the individual parcels as follows:
>
> - Parcel 1 - $11, 055,000 ($19,225/Acre)
> - Parcel 2 - $1,389,000 ($17,363/Acre)
> - Parcel 3 - $1,736,000 ($17,360/Acre)
> - Parcel 4 - $14,120,000 ($17,722/Acre)
>
> Total Aggregate Retail: $28,300,000

Respondent's sales comparison approach in BB-2 was not supported.

Available Sales In Bombay Beach Area and Value Conclusions

212. Respondent's work file contained various Multiple Listing Service (MLS) pages regarding sales in the Northshore area of Salton Sea. However, Respondent's work file contained no MLS information from the Bombay Beach area.

213. There were six available land sales in the Bombay Beach area at the time of Respondent's reports. A comparison of available sales within the Bombay Beach area contrasted sharply with Respondent's three selected land sales. The three selected land sales were situated in superior areas. Excluding transactions that involved heavily leveraged seller financing, the remaining unadjusted sales in the Bombay Beach area reflected a value range from $275 to $1,574 per acre. The available sales in the Bombay Beach area also showed a decline in price per

acre as parcel size increased. These available sales in the Bombay Beach area were significantly lower than Respondent's selected sales, which reflected an unadjusted range in value of from $20,000 to $30,514 per acre. The available sales from within the Bombay area indicated significantly lower land values than those concluded by Respondent.

214. BB-1 and BB-2 included a discounted cash flow analysis that assumed all four subject parcels were sold to an individual buyer. Respondent's discounted cash flow analysis was flawed because of Respondent's use of certain unsupported assumptions in his analysis. These assumptions included:

a. The assumption that the subject property would sell at the aggregate retail price of $26,176,000 (in BB-1) and $28,300,000 (in BB-2). The aggregate retail prices were based upon Respondent's Sales Comparison Approach that did not address various issues that impacted value, such as location, the availability of potable water, views, and the use of questionable arms length sales as comparable land sales.

b. The assumptions regarding marketing time and sell off periods, as Respondent's work file did not contain any supporting evidence pertaining to marketing time and sell off periods.

c. Respondent's estimate of Aggregate Retail sales increased by approximately 8.1 percent in the six-month period between the two dates of value in BB-1 and BB-2, while his selected discount rate decreased by seven percent or 700 basis points. Respondent's Reports indicated Developer's Profit was included within the respective Present Value Factors. Respondent did not discuss or provide any support for his selected discount rates.

SEVENTH CAUSE FOR DISCIPLINE

(Violations of 2005 USPAP – BB-1)

215. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Bombay Beach Appraisal Report No. 1 (BB-1) that Respondent prepared on or about November 8, 2005. BB-1 was for various noncontiguous raw land parcels totaling approximately 1,551.75 acres (Bombay Beach). Respondent's license is

subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 173 – 214 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify the relevant property characteristics of the subject properties, including specific zoning and general plan information. Respondent omitted known geological hazards, various mineral rights with "right of access at all times", site configuration and limited access, an adjacent railroad line and mischaracterized flood zone and development patterns. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent's determination of highest and best use was based upon a faulty analysis that failed to identify and consider current land use patterns and regulations, physical adaptability of the subject properties, and limited infrastructure and availability of utilities. Respondent's highest and best use conclusion was not a conclusion supported by the physical and legal considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(x).

c. Respondent failed to provide and adequately analyze comparable sales of properties that better represented the characteristics of the subject property, and misrepresented differences including physical and economic characteristics of the comparable sales. As a result, Respondent failed to provide adequate support for the value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(ix).

d. Respondent failed to analyze the current purchase contract for the subject property and a prior sale of the subject property in violation of S.R. 1-5 (a)(b) and 2-2 (b) (ix).

e. Based on paragraphs a -d above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in violation of S.R. 1-1(a).

f. Based on paragraphs a -d above, Respondent failed to identify the problem to be solved and failed to include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (f), and 2-2(b)(vii).

g. Based on paragraphs a -d above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly. This is a violation of S.R. 2-1 (a)(b).

h. Based on paragraphs a -d above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject properties, ignored available local market information and utilized land sales from another market area that resulted in communicating the assignment results in a misleading or fraudulent manner. This is a violation of the Conduct Section of the Ethics Rule.

EIGHTH CAUSE FOR DISCIPLINE

(Violations of 2006 USPAP – BB-2)

216. Respondent's license is subject to disciplinary action under Business and Professions Code section 11314 in conjunction with title 10, California Code of Regulations, sections 3701 and 3721, subdivision (a)(6), with regard to Bombay Beach Appraisal Report No. 2 (BB-2) that Respondent prepared on or about June 19, 2006. BB-2 was for various noncontiguous raw land parcels totaling approximately 1,551.75 acres (Bombay Beach). Respondent's license is subject to discipline for the USPAP violations listed as follows, which are more fully set forth in paragraphs 173 – 214 above, and are incorporated by this reference as though set forth in full herein:

a. Respondent failed to identify the relevant property characteristics of the subject properties, including specific zoning and general plan information. Respondent omitted known geological hazards, various mineral rights with "right of access at all times", site configuration and limited access, an adjacent railroad line and mischaracterized flood zone and development patterns. These are violations of S.R. 1-1 (b), 1-2 (e)(i), and 2-2 (b)(iii).

b. Respondent's determination of highest and best use was based upon a faulty analysis that failed to identify and consider current land use patterns and regulations, physical adaptability of the subject properties, and limited infrastructure and availability of utilities. Respondent's highest and best use conclusion was not a conclusion supported by the physical and

legal considerations applicable to the subject property. These are violations of S.R. 1-3 (a)(b), and 2-2 (b)(x).

c. Respondent failed to provide and adequately analyze comparable sales of properties that better represented the characteristics of the subject property, and misrepresented differences including physical and economic characteristics of the comparable sales. As a result, Respondent failed to provide adequate support for the value conclusions. These are violations of S.R. 1-1 (b), 1-4 (a), and 2-2 (b)(ix).

d. Respondent failed to analyze the current purchase contract for the subject property and a prior sale of the subject property in violation of S.R. 1-5 (b) and 2-2 (b) (ix).

e. Based on paragraphs a -d above, Respondent failed to correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal in violation of S.R. 1-1(a).

f. Based on paragraphs a -d above, Respondent failed to identify the problem to be solved and failed to include the research and analyses to perform the scope of work necessary to complete the assignment that would be consistent with appraiser peers' actions in violation of S.R. 1-2 (f), and 2-2(b)(vii).

g. Based on paragraphs a -d above, Respondent failed to clearly and accurately set forth the appraisal in a manner that would not be misleading and failed to report sufficient information to enable the intended users of the appraisal to understand the appraisal properly. This is a violation of S.R. 2-1 (a)(b).

h. Based on paragraphs a -d above, Respondent failed to disclose and properly analyze relevant property and market characteristics pertaining to the subject properties, ignored available local market information and utilized land sales from another market area that resulted in communicating the assignment results in a misleading or fraudulent manner. This is a violation of the Conduct Section of the Ethics Rule.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Chief of the Bureau of Real Estate Appraisers issue a decision:

1. Revoking or suspending Real Estate Appraiser License Number 004590, issued to Raymond Dozier;

2. Ordering Raymond Dozier to pay the Chief of the Bureau of Real Estate Appraisers the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 11409;

3. Ordering Raymond Dozier to pay the Chief of the Bureau of Real Estate Appraisers a fine pursuant to Business and Professions Code section 11316; and,

4. Taking such other and further action as deemed necessary and proper.

DATED: 11/12/13

Original Signed

ELIZABETH SEATERS
Chief of Enforcement
Bureau of Real Estate Appraisers
Department of Consumer Affairs
State of California
Complainant

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