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**BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION**

In the Matter of:

**Howard Brown
Land Surveyor
Registration No. 23942**

Respondent

Case No.: P22-027

**CONSENT AGREEMENT
and
ORDER OF DISCIPLINE**

In the interest of a prompt and judicious resolution of the above-captioned matter before the Arizona State Board of Technical Registration (“Board”) and consistent with the public interest, statutory requirements, and the responsibilities of the Board, and pursuant to A.R.S. § 32-101 et seq., and A.A.C. R4-30-120(G), the undersigned party, Howard Brown (“Respondent”), holder of Registration No. 23942, and the Board enter into the following Recitals, Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final disposition of this matter.

RECITALS

1. Respondent has read and understands this Consent Agreement and has had the opportunity to discuss this Consent Agreement with an attorney, or has waived the opportunity to discuss this Consent Agreement with an attorney.

2. Respondent understands that he has a right to a public administrative hearing concerning this case. He further acknowledges that at such formal hearing he could present evidence and cross-examine witnesses. By entering into this Consent Agreement, Respondent knowingly, voluntarily, and irrevocably waives his right to such an administrative hearing, as well as rights of rehearing, review, reconsideration, appeal, judicial review or any other administrative and/or judicial action concerning the matters set forth herein.

3. Respondent affirmatively agrees that this Consent Agreement shall be irrevocable.

1 4. Respondent understands that this Consent Agreement or any part of the
2 agreement may be considered in any future disciplinary action by the Board against him.

3 5. The Consent Agreement, any record prepared in this matter, all investigative
4 materials prepared or received by the Board and all related exhibits and materials, are
5 public records upon acceptance by the Board of this Consent Agreement and may be
6 retained in the Board's files pertaining to this matter.

7 6. Respondent understands this Consent Agreement deals with Board case
8 number P22-027 involving allegations that Respondent engaged in conduct that would
9 subject him to discipline under the Board's statutes and rules. The investigation into
10 these allegations against Respondent shall be concluded upon the Board's adoption of
11 this Consent Agreement.

12 7. Respondent understands that this Consent Agreement does not constitute a
13 dismissal or resolution of any other matters currently pending before the Board, if any,
14 and does not constitute any waiver, express or implied, of the Board's statutory authority
15 or jurisdiction regarding any other pending or future investigation, action or proceeding.

16 8. Respondent also understands that acceptance of this Consent Agreement does
17 not preclude any other agency, subdivision, or officer of this State from instituting any
18 other civil or criminal proceedings with respect to the conduct that is the subject of this
19 Consent Agreement.

20 9. Respondent acknowledges and agrees that, upon signing this Consent
21 Agreement and returning this document to the Board's Executive Director, he may not
22 revoke his acceptance of the Consent Agreement or make any modifications to the
23 document regardless of whether the Consent Agreement has been signed on behalf of the
24 Board. Any modification to this original document is ineffective and void unless
25 mutually agreed by the parties in writing.

26 10. This Consent Agreement is subject to the approval of the Board and is
27 effective only when accepted by the Board and signed on behalf of the Board. If the
28 Board does not accept this Consent Agreement, the Board retains its authority to hold a

1 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the
2 Board does not approve this Consent Agreement, it is withdrawn and shall be of no
3 evidentiary value and shall not be relied upon nor introduced in any action by any party,
4 except that the parties agree that should the Board reject this Consent Agreement and this
5 case proceeds to hearing, Respondent shall assert no claim that the Board was prejudiced
6 by its review and discussion of this document or any records relating thereto.

7 11. If a court of competent jurisdiction rules that any part of this Consent
8 Agreement is void or otherwise unenforceable, the remainder of the Consent Agreement
9 shall remain in full force and effect.

10 12. Respondent understands that any violation of this Consent Agreement may
11 result in disciplinary action, including suspension or revocation of the registration under
12 A.R.S. § 32-150.

13 13. Respondent agrees that the Board will adopt the following Findings of Fact,
14 Conclusions of Law and Order.

15 **FINDINGS OF FACT**

16 1. The Board is the duly constituted authority for the regulation and control of
17 the practice of Land Surveying in the State of Arizona.

18 2. Respondent is the holder of Arizona Land Surveyor Registration No. 23942.

19 3. On or about October 1, 2021, Respondent conducted a land survey and
20 prepared a record of survey for lot #110 of Tucson Estates in Tucson, Arizona.

21 4. On October 27, 2021, the Board received a complaint alleging that
22 Respondent conducted a land boundary survey between Lot 109 and Lot 110 of Tucson
23 Estates, on or about October 1, 2021, in Tucson, AZ in response to a property dispute, in
24 which Respondent failed to use a tape measure or GPS survey equipment to verify the
25 property markers in question at the north corner of Alleger's property, did not start his
26 survey from the marker in the middle of the cul-de-sac, based his survey on estimates,
27 and failed to acknowledge, address, or explain to Alleger that Respondent was not
28 advocating for either party.

1 5. On March 8, 2022, an Enforcement Advisory Committee Meeting (“EAC”)
2 convened to review the complaint against Respondent. The Committee found that
3 Respondent conducted the field investigation and survey accurately and in accordance
4 with standards, but failed to include several details in his record of survey which would
5 be needed for another Land Surveyor to follow his survey at a later date. The Committee
6 determined that Respondent failed to apply the appropriate technical knowledge and skill
7 in the practice of Land Surveying, and failed to conduct a land boundary survey in
8 accordance with the Arizona Boundary Survey Minimum Standards (“ABSMS”), in that
9 the following deficiencies were found in his record of survey:

- 10 a) The record of survey does not state why the survey was done in the scope
11 of services. This is not only a requirement, but should also be needed since
12 there was a dispute involved. Based on ABSMS #1
- 13 b) The survey included disputed land which involved Lots 109 and 110.
14 Respondent located control on Lots 110 and 111 but not Lot 109. This
15 should have been a key component of the survey and not neglected.
16 Additionally the prorating of the Lots was only one direction. It should
17 have included Lots 108, 109, 110, and 111 in its proration for it to be
18 balanced. Based on ABSMS #4 & #5.
- 19 c) The two monuments in the centerline of Lazy “A” Place were not located,
20 but they should have been. They are part of the plat and existed in the field,
21 according to the findings of the second surveyor. These would have aided
22 in the control of the survey. Based on ABSMS #4 & #5.
- 23 d) The Record of Survey did not show the existing occupation along the line
24 between Lots 109 and 110. This should have been part of the map anyway,
25 but especially so where there is a dispute. There was occupation on that
26 line. This occupation is known, because the second survey by Mr. Kagel
27 showed them. The pictures provided in the case show a rock occupation
28

1 line and existing vegetation. Additionally, the HOA mentions the disputed
2 line. Based on ABSMS #4.

3 e) The survey control on the Record of Survey, lists 5 found rebar. However,
4 these are not referenced as containing identification tags or caps, or whether
5 they did not contain any identification. The case pictures show 4 of the 5
6 rebar; 2 with identification marks and 2 without. They also do not state
7 whether they were accepted or not. Based on ABSMS #8a and #8b.

8 f) There is no Basis of Bearing shown on the Record of Survey. Based on
9 ABSMS #11a.

10 g) The signature on Respondent's stamp is not discernible on the Record of
11 Survey. Based on ABSMS #11b

12 h) The abbreviations "Fd", "IP", "M", and "R" were not defined in the Record
13 of Survey. Based on ABSMS #11d.

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15 6. During the EAC Meeting, Respondent acknowledged failing to:

16 a) State why the survey was done in the scope of services,

17 b) Locate controls on Lot #109,

18 c) Affix his tag on found rebar which had been previously unidentified,

19 d) Include a Basis of Bearing on his record of survey.

20 **CONCLUSIONS OF LAW**

21 1. The Board has jurisdiction in this matter pursuant to A.R.S. § 32-101, et seq.

22 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
23 pursuant to A.R.S. § 32-128(C)4 as it relates to A.A.C. R4-30-301(13), in that
24 Respondent failed to conduct a land boundary survey in accordance with the Arizona
25 Boundary Survey Minimum Standards.

26 3. The conduct alleged in the Findings of Fact also constitutes grounds for
27 discipline pursuant to A.R.S. § 32-128(C)4 as it relates to A.A.C. R4-30-301(6) in that
28 Respondent failed to apply the appropriate technical knowledge and skill in the practice

1 of a Board regulated profession.

2 **ORDER**

3 Based on the foregoing Findings of Fact and Conclusions of Law, the Board issues
4 the following Order:

5 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of
6 Reprimand.

7 2. ADMINISTRATIVE PENALTY. Within Ninety (90) days from the
8 effective date of this Consent Agreement, Respondent shall pay an administrative penalty
9 of Five Hundred Dollars (\$500.00) by certified check or money order made payable to
10 the State of Arizona Board of Technical Registration.

11 3. COST OF INVESTIGATION. Within Ninety (90) days from the effective
12 date of this Consent Agreement, Respondent shall pay the cost of investigation of this
13 case to the Board in the amount of Four Hundred Seventy Dollars (\$470.00) by certified
14 check or money order made payable to the State of Arizona Board of Technical
15 Registration, according to the provisions of A.R.S. § 32-128(H).

16 4. OBEY ALL LAWS. Respondent shall obey all federal, state and local
17 laws, as well as, all rules governing the practice of Land Surveying in the State of
18 Arizona. The Board shall consider any violation of this paragraph to be a separate
19 violation of the rules and statues governing the Arizona Board of Technical Registration.
20 The Board may also consider Respondent's non-compliance with this Order as a separate
21 violation of A.R.S. § 32-150.

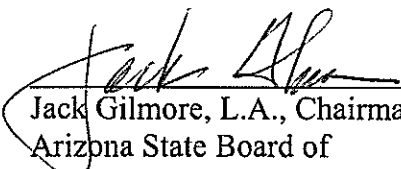
22 5. RENEWAL OF REGISTRATION. Respondent shall timely renew his
23 Arizona registration as a Land Surveyor, and timely pay all required registration fees.

24 6. EFFECTIVE DATE. The effective date of this Consent Agreement is the
25 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
26 effective date is the later of the two dates.

27 7. COSTS OF COMPLIANCE. Respondent shall pay all costs associated
28 with complying with this Consent Agreement.

1 8. NONCOMPLIANCE. If Respondent violates this Order in any way or fails
2 to fulfill the requirements of this Order, the Board, after giving notice and the opportunity
3 to be heard, may revoke, suspend or take other disciplinary actions against the
4 registration. The issue at such a hearing will be limited solely to whether this Order has
5 been violated.

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8 ACCEPTED and ORDERED this 25 day of April, 2022.

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10 
11 Jack Gilmore, L.A., Chairman
12 Arizona State Board of
13 Technical Registration

14 Consent Agreement and Order, No. P22-027 accepted this 14 day of
15 Feb., 2022.

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17 Howard Brown, Respondent
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ORIGINAL filed this 26 day of
April, 2022, with:

Arizona State Board of Technical Registration
1110 W. Washington, Suite 240
Phoenix, AZ 85007

COPY of the foregoing mailed via Certified Mail
No. 92148901 9434 4600 0874 74 and
First Class mail this 26 day of April, 2022, to:

Howard Brown
4960 N. Vista De Loma Segunda
Tucson, AZ 85749

By: Daniel Carthel
