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BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION

In the Matter of:

Timothy Gaudette
Registered Land Surveyor
Registration No. 45721

Respondent

Case No.: P16-028

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, Timothy Gaudette ("Respondent"), holder of Registration No. 45721, 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 (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this
6 Consent Agreement and may be retained in the Board's files pertaining to this matter.

7 6. Respondent understands this Consent Agreement deals with Board case
8 number P16-028 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 Registered Land Surveyor Registration
19 No. 45721.

20 3. On or about August 12, 2013, Respondent signed and sealed a land boundary
21 survey for a project located at W.O 13-911, 69th Place and Vista Dr., Maricopa County.

22 4. On or about October 22, 2015, the Board received a complaint alleging that
23 the Respondent failed to practice Land Surveying in accordance with the minimum
24 standards by not using existing monuments for his survey and not conducting research or
25 consider existing physical evidence of previous surveys. The complaint stated that the
26 Respondent did not utilize the existing monuments along Jackrabbit Road and the basis
27 of bearings is not directly tied to anything in the field alleging that the survey is not
28 retraceable as depicted on his map.

1 5. On February 2, 2016 the Board's Enforcement Advisory Committee ("EAC")
2 convened to review the complaint against Respondent. During the meeting, the
3 Committee found that Respondent failed to demonstrate a full comprehension of
4 boundary law and evidence evaluation abilities. The Committee also found that the
5 Respondent did not perform a diligent search for adjoining lot corners. Instead, the
6 Respondent precomputed the corners and set that the computed positions, which is
7 contrary to applicable boundary laws. The findings of the Committee are as follows:

- 8 a. Respondent failed to conduct research or consider existing physical evidence
9 of previous surveys in violation of A.R.S. § 32-128(C)(4) as it relates to
10 A.A.C. R4-30-301(13) and Arizona Boundary Survey Minimum Standards
11 item #2.
- 12 b. Respondent failed to use existing monuments for his survey in violation of
13 A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona
14 Boundary Survey Minimum Standards item #4. Respondent stated in his
15 interview that he did not make a diligent search for all corners in question.
16 Respondent stated that when searches for monuments he typically goes
17 about ½ foot from his search point.
- 18 c. Respondent failed to include evidence and explanation of reasons for not
19 accepting a monument or monuments in his survey in violation of A.R.S. §
20 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona Boundary
21 Survey Minimum Standards item #8.A.
- 22 d. Respondent failed to provide, within his drawing, a list of pertinent
23 reference documents that were used as a basis for his survey in violation of
24 A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona
25 Boundary Survey Minimum Standards item #11.E.

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1 CONCLUSIONS OF LAW

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

3 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
4 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona
5 Boundary Survey Minimum Standards item #2, in that Respondent failed to conduct
6 research or consider existing physical evidence of previous surveys.

7 3. The conduct alleged in the Findings of Fact constitutes grounds for discipline
8 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona
9 Boundary Survey Minimum Standards item #4, in that Respondent failed to use existing
10 monuments for his survey and set corners relying only upon precomputed corner
11 positions not evidence within the interior of the subdivision.

12 4. The conduct alleged in the Findings of Fact constitutes grounds for discipline
13 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona
14 Boundary Survey Minimum Standards item #8.A, in that Respondent failed to include
15 evidence and explanation of reasons for not accepting a monument or monuments in his
16 survey.

17 5. The conduct alleged in the Findings of Fact constitutes grounds for discipline
18 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13) and Arizona
19 Boundary Survey Minimum Standards item #11.E, in that Respondent failed to provide,
20 within his drawing, a list of pertinent reference documents that were used as a basis for
21 his survey.

22 ORDER

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

25 1. LETTER OF REPRIMAND. Respondent is hereby issued a Letter of
26 Reprimand.

27 2. STAYED SUSPENSION AND PROBATION. Respondent's registration as
28 Registered Land Surveyor No. 45721, shall be suspended for six (6) months; however,

1 the suspension is stayed for as long as Respondent remains in compliance with this
2 Order. During the stay of suspension, Respondent's registration as a Registered Land
3 Surveyor is placed on probation for six (6) months. If Respondent is non-compliant with
4 any terms of this Order during the six (6) month stayed suspension and probation period,
5 the stay of the suspension shall be lifted and Respondent's registration as a Land
6 Surveyor shall be automatically suspended without a formal hearing, and remain
7 suspended until Respondent is compliant with all terms of this Order. If Respondent
8 completes all terms of this Order prior to the six (6) month stayed suspension and
9 probation period, Respondent may seek an early termination of this Order by requesting a
10 formal review by the Board. The Board may also consider Respondent's non-compliance
11 with this Order as a separate violation of A.R.S. § 32-150.

12 3. ADMINISTRATIVE PENALTY. Within six (6) months from the effective
13 date of this Consent Agreement, Respondent shall pay an administrative penalty of One
14 Thousand Five Hundred Dollars (\$1500.00) by certified check or money order made
15 payable to the State of Arizona Board of Technical Registration.

16 4. COST OF INVESTIGATION. Within ninety (90) days from the effective
17 date of this Consent Agreement, Respondent shall pay the cost of investigation of this
18 case to the Board in the amount of Six Hundred Eighty-Three Dollars (\$683.00) by
19 certified check or money order made payable to the State of Arizona Board of Technical
20 Registration, according to the provisions of A.R.S. § 32-128(H).

21 5. OBEY ALL LAWS. During the probationary period, Respondent shall
22 obey all federal, state and local laws, as well as, all rules governing the practice of Land
23 Surveying in the State of Arizona. The Board shall consider any violation of this
24 paragraph to be a separate violation of the rules and statues governing the Arizona Board
25 of Technical Registration.

26 6. RENEWAL OF REGISTRATION. During the probationary period,
27 Respondent shall timely renew his Arizona registration as a Registered Land Surveyor
28 and timely pay all required registration fees.

1 7. EFFECTIVE DATE. The effective date of this Consent Agreement is the
2 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
3 effective date is the later of the two dates.

4 8. COSTS OF COMPLIANCE. Respondent shall pay all costs associated
5 with complying with this Consent Agreement.

6
7 ACCEPTED and ORDERED this 22 day of MARCH, 2016.

8
9 E. Leroy Brady
10 E. Leroy Brady, Chairman
11 Arizona State Board of
12 Technical Registration

13 Consent Agreement and Order, No. P16-028 accepted this 9 day of
14 MARCH, 2016.

15 Timothy Gaudette
16 Timothy Gaudette, Respondent

17 ORIGINAL filed this 22 day of

18 MARCH, 2016, with:

19 Arizona State Board of Technical Registration
20 1110 W. Washington, Suite 240
21 Phoenix, AZ 85007

22 COPY of the foregoing mailed via Certified Mail
23 No. 7015 166 000 1489 5382 and

24 First Class mail this 22 day of MARCH, 2016, to:

25 Timothy Gaudette
26 20870 N 7th Pl
27 Phoenix, AZ 85024

28 By: J. Brauer