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 Allegor Respondent
 Other

BEFORE THE ARIZONA STATE
BOARD OF TECHNICAL REGISTRATION

In the Matter of:

Case No.: P17-042

Donald Surface
Land Surveyor
Registration No. 16203

Surface Engineering
Registration No. 16370

Respondents

CONSENT AGREEMENT
AND ORDER
for
VOLUNTARY SURRENDER

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, Donald Surface ("Respondent"), holder of Registration No. 16203, Surface Engineering (Respondent Firm), holder of Registration No. 16370, 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

1 irrevocable.

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

4 5. The Consent Agreement, any record prepared in this matter, all investigative
5 materials prepared or received by the Board and all related exhibits and materials, are
6 public records (as defined in A.R.S. § 41-158.18) upon acceptance by the Board of this
7 Consent Agreement and may be retained in the Board's files pertaining to this matter.

8 6. Respondent understands this Consent Agreement deals with Board case
9 number P17-042 involving allegations that Respondent engaged in conduct that would
10 subject him to discipline under the Board's statutes and rules. The investigation into
11 these allegations against Respondent shall be concluded upon the Board's adoption of
12 this Consent Agreement.

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

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

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

27 10. This Consent Agreement is subject to the approval of the Board and is
28 effective only when accepted by the Board and signed on behalf of the Board. If the

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

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

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

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

16 **FINDINGS OF FACT**

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

19 2. Respondent is the holder of Arizona Professional Land Surveyor Registration
20 No. 16203.

21 3. Respondent Firm is the holder of firm registration No. 16370

22 4. Respondent Firm registration with the Board was expired at the time of
23 project engagements in August 2016 and October 2016. Subsequently, Respondent firm
24 was renewed with the Board on December 14, 2016.

25 5. On or about May 15, 2000, Respondent performed a survey at Country Hills
26 Mobile Home Park (MHP), located at 11001 W. McDowell Rd, Avondale, AZ.

27 6. On or about February 12, 2015, Respondent performed an ALTA/ACSM
28 Land Title Survey at Country Hills MHP, located at 11001 W. McDowell Rd., Avondale,

1 AZ.

2 7. On or about April 10, 2015, Respondent performed a survey on Lot Split
3 Sec. 6, T5N, R3E, of the G&SRM, Maricopa County, AZ.

4 8. On or about August 30, 2016, Respondent Firm engaged in the practice of
5 Professional Land Surveying by performing a survey on Lot Split Sec. 25, T6N, R2E,
6 G&SRM, Maricopa County, AZ, without Board registration.

7 9. On or about October 5, 2016, Respondent Firm engaged in the practice of
8 Professional Land Surveying by performing a survey on Lot Split Sec. 9, T3N, R3E,
9 G&SRM, Maricopa County, AZ, without Board Registration.

10 10. On October 20, 2016, Board staff received a complaint alleging that
11 Respondent Firm engaged in the practice of land surveying without firm registration and
12 that Respondent lacked the required knowledge and skill to complete boundary surveys
13 and failed to meet the Arizona Boundary Survey Minimum Standards ("ABSMS")
14 related to the aforementioned projects.

15 11. On March 1, 2017, an Enforcement Advisory Committee convened to review
16 the complaint against Respondent. During the meeting, the Committee opined that
17 Respondent displayed a level of surveying practice that is below the standard of care and
18 showed a lack of attention to the current ABSMS, Board Rules and Statutes. The
19 Committee found that:

- 20 a. Respondent Firm engaged in the practice of land surveying without firm
21 registration in August 2016 and October 2016.
- 22 b. Respondent failed to record the initial survey that was performed in 2000
23 for Country Hills Mobile Home Park, 11001 W. McDowell Rd., Avondale,
24 AZ, in violation of ARS 33-105.
- 25 c. Respondent failed to record ALTA/ACSM Land Title Survey of Country
26 Hills MHP dated February 12, 2015, is violation of ABSMS 13.C.
- 27 d. Respondent failed to clarify whether parcel corners were set or found,
28 provide data relating to such monuments, provide data necessary for the

1 intelligent interpretation of the various items and locations of the points,
2 lines and areas on a survey for a Lot Split dated October 5, 2016, Sec. 9,
3 T3N, R3E, in violation of ABSMS 8.B and 11, and A.R.S. 33-105(C)(1)
4 and (5).

5 e. Respondent failed to describe monuments found, set, the kind, size and
6 location of such monuments and all other data relating to such monuments
7 or provide data necessary for the intelligent interpretation of the various
8 items and locations of the points, lines and areas, and describe how the SW
9 corner of NW Quarter of Lot 4 was determined for a Lot Split dated April
10 10, 2015, Sec. 6, T5N, R3E, in violation of ABSMS 11, and A.R.S. 33-
11 105(C)(1) and (5).

12 f. Respondent failed to describe monuments found, set, the kind, size and
13 location of such monuments and all other data relating to such monuments
14 or provide data necessary for the intelligent interpretation of the various
15 items and locations of the points, lines and areas, for a Lot Split dated
16 August 30, 2016, Sec. 25, T6N, R2E, in violation of ABSMS 11, and
17 A.R.S. 33-105(C)(1) and (5).

18 CONCLUSIONS OF LAW

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

20 2. The conduct alleged in the Findings of Fact constitutes grounds for discipline
21 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(13), in that
22 Respondent failed to conduct land surveys in accordance with Arizona Boundary Survey
23 Minimum Standards, specifically Items 8.B and 11 of the ABSMS.

24 3. The conduct alleged in the Findings of Fact constitutes grounds for discipline
25 pursuant to A.R.S. § 32-121, in that Respondent practiced a Board regulated profession
26 through a firm without Board registration.

27 4. The conduct alleged in the Findings of Fact constitutes grounds for
28 discipline pursuant to A.R.S. § 32-141, in the Respondent firm engaged in the practice of

1 a Board regulated profession without firm registration with the Board.

2 5. The conduct alleged in the Findings of Fact constitutes grounds for discipline
3 pursuant to A.R.S. § 32-128(C)(4) as it relates to A.A.C. R4-30-301(4) in that
4 Respondent violated A.R.S. § 33-105(C)(1)(5), by failing to show all monuments found,
5 set, removed, reset or replaced, the kind, size and location of such monuments and all
6 other data relating to such monuments as well as any other data necessary for the
7 intelligent interpretation of the various items and locations of the points, lines and areas
8 on multiple surveys.

9 **ORDER**

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

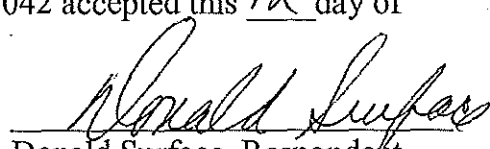
12 1. **VOLUNTARY SURRENDER.** Respondent agrees to voluntarily surrender
13 his Registered Land Surveyor Registration No. 16203 in lieu of a formal hearing.

14 2. **EFFECTIVE DATE.** The effective date of this Consent Agreement is the
15 date the Respondent and Board sign the Consent Agreement. If the dates are different, the
16 effective date is the later of the two dates.

17 ACCEPTED and ORDERED this 25 day of APRIL, 2017.

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19
20 
21 Jason Madison, Chairman
Arizona State Board of
Technical Registration

22
23 Consent Agreement and Order, No. P17-042 accepted this 12th day of
APRIL, 2017.

24
25 
26 Donald Surface, Respondent

27 ORIGINAL filed this 25 day of
28 APRIL, 2017, with:

1 Arizona State Board of Technical Registration
2 1110 W. Washington, Suite 240
3 Phoenix, AZ 85007

4 **COPY** of the foregoing mailed via Certified Mail
5 No. 9214 8901 9434 4600 0150 95 and
6 First Class mail this 1 day of MAY, 2017, to:

7 Donald Surface
8 1646 E Runion Dr.
9 Phoenix, AZ 85024

10 By: D. Kramer