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13 *Attorney for the Arizona State Board of Technical Registration*

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

16 In the Matter of:

Case No.: HI20-012

17 **David Berry,**  
18 Certified Home Inspector No. 38633

19 **CONSENT AGREEMENT**  
20 **AND ORDER OF DISCIPLINE**

21 and

22 **DJ's Horizon Home Inspection, LLC,**  
23 d/b/a **Horizon Home Inspection,**  
24 Firm Registration No. 12302,

25 Respondents.

26 In the interest of a prompt and judicious resolution of the above-captioned matter  
27 before the Arizona State Board of Technical Registration (the "Board"), and consistent  
with the public interest, statutory requirements, and the responsibilities of the Board, and  
pursuant to Arizona Revised Statutes ("A.R.S.") § 32-101, *et seq.*, and Arizona  
Administrative Code ("A.A.C.") R4-30-120(G), the Board and the undersigned party,  
David Berry, Certified Home Inspector No. 38633 ("Respondent") for himself and as the  
principal for DJ's Horizon Home Inspection, LLC, Firm Registration No. 12302

1 (“Respondent Firm”) (collectively, “Respondents”), enter into the following Recitals,  
2 Findings of Fact, Conclusions of Law and Order (“Consent Agreement”) as a final  
3 disposition of this matter.

#### 4 **RECITALS**

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

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

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

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

19 5. The Consent Agreement, any record prepared in this matter, all  
20 investigative materials prepared or received by the Board and all related exhibits and  
21 materials, are records (as defined in A.R.S. § 41-151.18) upon acceptance by the Board  
22 of this Consent Agreement and may be retained in the Board’s files pertaining to this  
23 matter.

24 6. Respondent understands this Consent Agreement deals with Board case  
25 number HI20-012 involving allegations that Respondent and Respondent Firm engaged  
26 in conduct that would subject them to discipline under the Board’s statutes and rules.  
27

1 The investigation into these allegations against Respondent and Respondent Firm shall be  
2 concluded upon the Board's adoption of this Consent Agreement.

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

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

11 9. Respondent acknowledges and agrees that, upon signing this Consent  
12 Agreement and returning this document to the Board's Executive Director, Respondent  
13 and Respondent Firm may not revoke acceptance of the Consent Agreement or make any  
14 modifications to the document regardless of whether the Consent Agreement has been  
15 signed on behalf of the Board. Any modification to this original document is ineffective  
16 and void unless mutually agreed by the parties in writing.

17 10. This Consent Agreement is subject to the approval of the Board and is  
18 effective only when accepted by the Board and signed on behalf of the Board. If the  
19 Board does not accept this Consent Agreement, the Board retains its authority to hold a  
20 formal administrative hearing pursuant to A.R.S. § 32-128(E). In the event that the  
21 Board does not approve this Consent Agreement, it is withdrawn, shall be of no  
22 evidentiary value, and shall not be relied upon nor introduced in any action by any party.  
23 Respondent agrees that should the Board reject this Consent Agreement and this case  
24 proceeds to hearing, Respondent and Respondent Firm shall assert no claim that the  
25 Board was prejudiced by its review and discussion of this document or any records  
26 relating thereto.

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

4 12. Respondent agrees that any violation of this Consent Agreement may result  
5 in disciplinary action, including suspension or revocation of registration under A.R.S. §  
6 32-150.

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

9 **FINDINGS OF FACT**

10 1. The Board is the duly constituted authority for the regulation and control of  
11 the practice of home inspection, etc., and the firms under which registrants practice home  
12 inspection, pursuant to A.R.S. § 32-101, *et seq.*

13 2. Respondent holds certificate number 38633 to practice home inspection in  
14 Arizona, and is the principal for Respondent Firm, registration number 12302.

15 3. On December 24, 2017, Respondent Firm's registration number 12302  
16 expired, but was reregistered on October 5, 2020, under Firm No. 22862.

17 4. On March 25, 2019, during the period in which Respondent Firm's  
18 registration was expired, Respondents performed and produced a Home Inspection  
19 Report for a property located at 17836 W. Cactus Flower Dr., Goodyear, Arizona, which  
20 was being purchased by Robert and Linda Bland (the "Blands").

21 5. On September 10, 2019, the Blands filed a report with the Board alleging  
22 several deficiencies in Respondents' home inspection.

23 6. The Board appointed two assessors, Joseph Warren and Anthony Cucci, to  
24 evaluate the Blands' report.

25 7. Both assessors concluded that the Blands' allegations were unsubstantiated,  
26 but that there were technical errors in Respondents' report.

27 8. On June 3, 2020, Board staff sent to Respondents a proposed consent

1 agreement, to which Respondent replied on June 4, 2020, stating "Yes, I approve," but  
2 Respondent did not remit a signed consent agreement.

3 9. Because of Respondents' failure to execute the consent agreement, the  
4 Board convened a meeting by the Enforcement Advisory Committee, which issued a  
5 report on June 10, 2020, substantiating a finding that Respondent's report and  
6 documentation fell below the Standards of Professional Practice for Arizona Home  
7 Inspectors ("S.O.P"), because of the following deficiencies:

- 8 a. Respondent failed to observe and report on the condition of fixtures  
9 and faucets as required in S.O.P # 7.1(A)(2);
- 10 b. Respondent failed to observe and report how functional drainage  
11 was determined as required in S.O.P #7.2(B)(3); and
- 12 c. Respondent failed to report on a vapor retarder as required in S.O.P  
13 #12.

#### 14 **CONCLUSIONS OF LAW**

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

17 2. The conduct alleged above constitutes grounds for discipline pursuant to  
18 A.R.S. § 32-128(C)(4) as it relates to R4-30-301.01(A), in that Respondent may have  
19 failed to conduct a home inspection in accordance with the Standards of Professional  
20 Practice for Arizona Home Inspectors.

21 3. The conduct alleged above constitutes grounds for discipline against  
22 Respondent as principal of Respondent Firm, pursuant to A.R.S. §§ 32-101(27) and 32-  
23 106.02, in that Respondent Firm was not registered with the Board to conduct a home  
24 inspection in Arizona March 25, 2019, as required by A.R.S. §§ 32-121 and 32-141.

#### 25 **ORDER**

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

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

3           2.     STAYED SUSPENSION AND PROBATION. Respondent's Certification  
4 as Home Inspector No. 38633, shall be suspended for ninety (90) days; however, the  
5 suspension is stayed for as long as Respondent remains in compliance with this Order.  
6 During the stay of suspension, Respondent's certification as a Home Inspector is placed  
7 on probation for ninety (90) days. If Respondent is non-compliant with any terms of this  
8 Order during the ninety (90) day stayed suspension and probation period, the stay of the  
9 suspension shall be lifted and Respondent's certification as a Home Inspector shall be  
10 automatically suspended without a formal hearing, and remain suspended until  
11 Respondent is compliant with all terms of this Order.

12           3.     ADMINISTRATIVE PENALTY. Within thirty (30) days from the  
13 effective date of this Consent Agreement, Respondent shall pay an administrative penalty  
14 of One Thousand Dollars (\$1000.00) by certified check or money order made payable to  
15 the State of Arizona Board of Technical Registration.

16           4.     COST OF INVESTIGATION. Within thirty (30) 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 Three Hundred Twenty Dollars (\$320.00) by certified  
19 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.     PEER REVIEW. Within ninety (90) days of the effective date of this  
22 Consent Agreement, Respondent shall accompany a supervising Certified Home  
23 Inspector ("Peer Reviewer") for one Home Inspection, and perform the inspection at the  
24 same time and location as the Peer Reviewer. Respondent shall write a Home Inspection  
25 Report, and submit the written report to the Peer Reviewer for review. The Respondent  
26 may select his Peer Reviewer who shall be in good standing with the Board and shall not  
27 have received any disciplinary action from the Board within the last 3-years. The Peer

1 Reviewer shall have been continuously certified by the Board as a Home Inspector for at  
2 least five (5) years and shall have conducted at least two hundred and fifty (250) Home  
3 Inspections in the State of Arizona. The Respondent shall cause the Peer Reviewer to  
4 sign an Affidavit and Agreement to Conduct Peer Review with the Board affirming that  
5 the Peer Reviewer has met the Peer Review selection criteria prior to conducting any Peer  
6 Reviews. At the conclusion of each peer reviewed Home Inspection, Respondent will  
7 submit his work product, specifically a Home Inspection Report, to the Peer Reviewer  
8 who will review and make all corrections to the Respondent's Home Inspection Report  
9 necessary for the report to meet the Standards of Professional Practice for Arizona Home  
10 Inspectors. Respondent shall not perform any Home Inspections or provide any client  
11 with a Home Inspection Report for a fee, until all Peer Reviews are completed.  
12 Respondent shall ensure that the Peer Reviewer provides a written report to the Board  
13 after the peer reviewed Home Inspection, detailing any deficiencies in the Respondents'  
14 practice, and certifying that the deficiencies have been explained and corrected, in so far  
15 as the peer reviewed Home Inspection is concerned. Respondent shall retain the Peer  
16 Reviewer at his own expense.

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

22 7. RENEWAL OF REGISTRATION. Respondent and Respondent Firm shall  
23 timely renew their Arizona registration as a home inspector and home inspection firm,  
24 and timely pay all required registration fees.

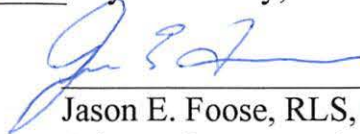
25 8. NON-COMPLIANCE. If Respondents violate this Order in any way or  
26 fails to fulfill the requirements of this Order, the Board, after giving notice and the  
27 opportunity to be heard, may revoke, suspend or take other disciplinary actions against

1 their registrations. The issue at such a hearing will be limited solely to whether this  
2 Order has been violated.

3 9. EFFECTIVE DATE. The effective date of this Consent Agreement is the  
4 date it was last executed by the Respondent or the Board.

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

7 ACCEPTED and ORDERED this 8<sup>TH</sup> day of January, 2021.

8  
9 

10 Jason E. Foose, RLS, Chairman  
11 Arizona State Board of  
12 Technical Registration

13 CONSENT AGREEMENT and Order, Number AL20-004 accepted  
14 this 16 day of November, 2020.

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17 David Berry, on behalf of himself and  
18 DJ's Horizon Home Inspection, LLC,  
19 Respondents  
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27



1 ORIGINAL of the foregoing filed  
2 this 10 day of December, 2021, with:

3 Arizona State Board of Technical Registration  
4 1110 W. Washington, Suite 240  
5 Phoenix, AZ 85007

6 COPY of the foregoing ~~e-mailed~~ and mailed  
7 this 10 day of December, 2021, to:

8 David Berry  
9 DJ's Horizon Home Inspection, LLC  
10 PO BOX 9446  
11 Surprise, AZ 85374  
12 [Horizonhomeinspection2@gmail.com](mailto:Horizonhomeinspection2@gmail.com)  
13 Respondent

14 COPY of the foregoing e-mailed  
15 this \_\_\_\_\_ day of \_\_\_\_\_, 2021, to:

16 Deanie Reh  
17 Assistant Attorney General  
18 [deanie.reh@azag.gov](mailto:deanie.reh@azag.gov)  
19 Attorney for the State of Arizona

20 By: \_\_\_\_\_

21 #9099336

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