### IN THE MATTER OF The Real Estate Act, S.A. 1996, c.R-4.5

AND IN THE MATTER OF MIGHTY PEACE REALTY LTD. o/a REALTY WORLD MIGHTY PEACE REALTY, WILLIAM LEN BASNETT, designated representative, DIANE SCHWENDEMAN, branch office designated representative, and KARL SCHWENDEMAN, salesperson

#### INTRODUCTION

- 1. The Executive Director of the Real Estate Council of Alberta ("the Executive Director") conducted an investigation into whether the conduct of Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman is deserving of sanction and/or whether they otherwise breached the requirements of the Real Estate Act or the Rules prescribed pursuant to the Act.
- 2. The Executive Director, Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman have agreed to resolve the allegations against them on the terms and conditions set out below.

#### AGREED STATEMENT OF FACTS

- 3. William Len Basnett has been the designated representative of Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty (hereinafter "Mighty Peace Realty Ltd.") located in Fairview, Alberta since March 1, 1988.
- 4. Diane Schwendeman has been registered as the branch office designated representative of Mighty Peace Realty Ltd. located in Grimshaw, Alberta since October 1, 1993.
- 5. Karl Schwendeman has been registered as a salesperson with the Mighty Peace Realty Ltd. Grimshaw branch since February 24, 1986. He is currently registered with the same agency.
- 6. Karl Schwendeman represented the Vendors in a real estate transaction involving a vacant property. He also represented the Purchaser who bought the vacant property.
- 7. On or about February 14, 1996, Karl Schwendeman presented an offer to his Vendor clients from his Purchaser client dated February 14, 1996 with a possession date of April 4, 1996. The Vendors accepted the offer on February 15, 1996.

- 8. Karl Schwendeman regularly checked the Vendors' property to ensure there were no problems. Subsequent to the acceptance of the offer however, the Purchaser requested the keys of the property so that he could now check the premises. Karl Schwendeman personally knew the Purchaser and felt he could trust him. He therefore provided the Purchaser with the keys. Karl Schwendeman did not inform his Vendor clients or his branch office designated representative, Diane Schwendeman, that he had given the vacant property keys to the Purchaser.
- 9. Prior to the transaction closing, Karl Schwendeman discovered that the Purchaser had begun renovations to the property and moved his possessions on the property without the knowledge or consent of Karl Schwendeman, Diane Schwendeman or the Vendors.
- 10. Upon discovering the actions of the Purchaser, Karl Schwendeman immediately instructed the Purchaser to return the keys to him.
- 11. William Len Basnett acknowledges that Mighty Peace Realty Ltd. provides a service to clients to check vacant properties listed with the agency. However, he does not become involved in the particulars of these arrangements and leaves the details with the real estate salesperson handling the transaction. Mighty Peace Realty Ltd. has no formal policies addressing the issue of vacant properties.
- 12. By reason of the matters herein, William Len Basnett's conduct is deserving of sanction in that he failed to provide adequate monitoring and supervision of the branch office and employees.
- 13. By reason of the matters herein, Diane Schwendeman's conduct is deserving of sanction in that she did not supervise the actions of Karl Schwendeman, a salesperson registered with her branch office.
- 14. By reason of the matters herein, Karl Schwendeman's conduct is deserving of sanction in that:
  - a) he provided a key to the Purchaser prior to the possession date without obtaining the consent of his Vendor clients; and
  - b) he failed to act in the best interests of his Vendor clients and as such, breached his fiduciary duties as a real estate salesperson to the Vendors.
- 15. Karl Schwendeman invested approximately \$900 of his personal funds toward the upkeep of the vacant property.

#### SETTLEMENT TERMS

16. In settlement of these matters, Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman agree to each receiving a written Letter of Reprimand.

- 17. William Len Basnett agrees to establish policies and procedures on the management of vacant properties and the release of keys. He agrees to immediately provide such policies to the Real Estate Council of Alberta for review and approval.
- 18. Costs in this matter are in the amount of \$500 and are payable immediately to the Real Estate Council of Alberta.
- 19. Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman acknowledge that they have been given an opportunity to seek the advice of legal counsel and acknowledge that they are agreeing to the terms of settlement of their own free will.
- 20. Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman are aware that a copy of the written Letter of Reprimand will be placed on their respective files and may be reviewed and considered in any future disciplinary proceedings.
- 21. Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman are aware the contents of this Consent Agreement may be published by the Real Estate Council of Alberta.
- 22. Mighty Peace Realty Ltd. o/a Realty World Mighty Peace Realty, William Len Basnett, Diane Schwendeman and Karl Schwendeman hereby waive any rights they may have under the Act or otherwise to a review, hearing, appeal or other judicial proceeding involving the matter referred to herein.
- 23. These settlement terms are intended to resolve all matters described herein and subject to the approval of the Hearing Panel, the Executive Director will take no further action under the Act or before the courts in this regard.

Signed and delivered in the presence of	) ) )
"A.N."	) 'William Len Basnett"
Witness to the signature	) WILLIAM LEN BASNETT
of William Len Basnett	) Designated representative
	) Mighty Peace Realty Ltd.
	) ola Realty World Mighty Peace Realty

4

		•
"A.N." Witness to the signature of Diane Schwendeman	) ) ) ) )	"Diane Schwendeman"  DIANE SCHWENDEMAN  Branch office designated representative  Mighty Peace Realty Ltd.  o/a Realty World Mighty Peace Realty
"A.N." Witness to the signature of Karl Schwendeman	) ) )	"Karl Schwendeman"  KARL SCHWENDEMAN  Salesperson
The Executive Director recommend settlement based on the Agreed State		Hearing Panel the proposed terms of Facts.
	Real	Estate Council of Alberta
"J.P." Witness t# the signature of Bob Myroniuk	Per:	"Bob Myroniuk" Bob Myroniuk Executive Director
Recommendation Approved Recommendation Denied	<u></u>	
DATED at the City of Calgary, in the I	Province	of Alberta thisday of AUGUST,
	Re	eal Estate Council of Alberta
	Pe	er: "John Fraser" Hearing Panel Chairperson

5

## AFFIDAVIT OF EXECUTION

CANADA	) I, <u>A.N.</u>
PROVINCE OF ALBERTA	) (name of witness), ) of the Town of Fairview in the Province of Alberta
TO WIT:	) MAKE OATH AND SAY:
annexed instrument, who	esent and did see WILLIAM LEN BASNETT named in the is personally known to me to be the person named therein, same for the purpose named therein.
THAT the same was executed and that I am the subscrib	cuted at the Town of Fairview, in the Province of Alberta, ing witness thereto.
3. THAT I know the said part	ty and he is in my belief of the full age of eighteen years.
SWORN BEFORE ME at the of Fairview in the Province of Alberta this 2/ day of	
"B.K." A Commissioner for Oats in for the Province of Alberta	and )

## AFFIDAVIT OF EXECUTION

CANADA	)	١,	A.N.	of
PROVINCE OF ALBERTA	)	the	(name of witness), Town of Grimshaw in the Province	of Alberta
TO WIT:	)	MA	AKE OATH AND SAY:	
annexed instrument, who	o is pers	onal	did see <b>DIANE SCHWENDEMAN</b> in the last of the person has the purpose named therein.	
5. THAT the same was exe and that I am the subscr			e Town of Grimshaw, in the Provinces thereto.	e of Alberta
6. THAT I know the said pa	arty and	she i	is in my belief of the full age of eigh	teen years.
SWORN BEFORE ME at the of Grimshaw in the Province Alberta this day of		) ) ) )	"A.N." (signature of witness)	
"B.K." A Commissioner for Oaths in for the Province of Alberta	n and	) ) )		

# AFFIDAVIT OF EXECUTION

CA	NADA	)		\.No	f
PF	ROVINCE OF ALBERTA	)	•	name of witness), own of Grimshaw in the Province of Alberta	
TC	WIT:	)	MAK	E OATH AND SAY:	
7.		is pers	onally	d see <b>KARL SCHWENDEMAN</b> named in the known to me to be the person named therein purpose named therein.	
8.	THAT the same was exec and that I am the subscrib			own of Grimshaw, in the Province of Albert nereto.	a,
9.	THAT I know the said part	ty and l	he is ir	my belief of the full age of eighteen years.	
of	VORN BEFORE ME at the Grimshaw in the Province operta this 2/ day of 19	of	) ) ) )	"A.N." (signature of witness)	
K	3.K." Commissioner for Oaths	and	)		