

REAL ESTATE COUNCIL OF ALBERTA
NOTICE OF ADMINISTRATIVE PENALTY

To: Greenstreet Inc.
323 Edgebrook Grove NW
Calgary, Alberta T3A 5T9

In accordance with section 83 and the Bylaws of the *Real Estate Act* RSA 2000 c R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) is of the opinion that Greenstreet Inc. has contravened section 17 of the Act and hereby assesses an Administrative Penalty in the amount of **\$5,000**. The evidence giving rise to the Executive Director's decision is as follows.

On October 24, 2007 Greenstreet Inc. was incorporated in Alberta with the directors noted Jimmy Tan Minh Diep (Mr. Diep) and K.H. At the time of incorporation Mr. Diep was a real estate associate registered to Unison Realty Group Ltd.

Between February 26, 2008 and June 16, 2009 Greenstreet Inc., through its representatives being either Mr. Diep or K.H., entered into 35 property management agreements with a number of property owners. To summarize the terms of the agreement, services included advertising and obtaining suitable tenants, preparation of leases, supervise the move in and out of tenants, use its best efforts to arrange for performance of the owners obligations to all tenants, to pursue remedies on behalf of the owner in relation to breaches by the tenant, to collect all rents and other charges payable by the tenant, to supervise and arrange for any necessary repairs to the rental premises, hold funds in trust and disburse funds in accordance with the trust terms and provide a full accounting on a monthly basis of all activities to the property owner undertaken on their behalf. The agreement further provided that Greenstreet Inc. was entitled to a monthly compensation fee of 10% exclusive of GST for their services in addition to reimbursement of advertising and marketing costs and such other compensation as provided for within the agreement.

Between June 25, 2008 and June 26, 2009 Greenstreet Inc., through its representatives being either Mr. Diep or K.H., prepared and/or executed 41 residential tenancy agreements between the property owner as landlord and

various tenants in which Greenstreet Inc. was named as the agent acting on behalf of the property owner/landlord.

On April 27, 2009 Mr. Diep, as director, was advised by RECA staff that the property management activities of Greenstreet Inc. were in breach of the *Real Estate Act* and he was provided with options to resolve this matter.

During the period of April 28, 2009 to August 13, 2009, Greenstreet Inc., through its representatives being either Mr. Diep or K.H., continued to conduct property management activities and entered into new property management agreements and residential tenancy agreements.

On August 13, 2009 Mr. Diep was advised by RECA staff that he must cease all property management agreements immediately and forward all trust funds to the property owners. RECA requested verification that this was done. Mr. Diep, on behalf of Greenstreet Inc. subsequently provided verification of the transfer to the property owner of all trust funds and notification to all tenants that this was done.

The Executive Director is of the opinion that the above noted conduct is in violation of section 17 of the *Real Estate Act* which sets out that:

17 No person shall

- (a) trade in real estate as a real estate broker,
 - (b) deal as a mortgage broker,
 - (c) act as a real estate appraiser, or
 - (d) advertise himself or herself as, or in any way hold himself or herself out as, a mortgage broker, real estate broker or real estate appraiser
- unless that person holds the appropriate authorization for that purpose issued by the Council.

In accordance with section 83 of the *Act* and Part 4 of the Bylaws, the Executive Director hereby assesses an Administrative Penalty in the amount of **\$5,000** against you.

The circumstances of this matter indicate the following aggravating and mitigating factors were considered:

Aggravating Factors

- Greenstreet Inc., through its representatives, continued to conduct property management activities after being notified by RECA it was not authorized to do so.

Mitigating Factors

- There have been no complaints made to RECA by any of the property owners or any of the tenants nor is there any indication of trust account violations.

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the *Act* will be taken against you in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the *Act* with an offence in respect of those contraventions.

This sum of **\$5,000** is payable to RECA within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to RECA.

If you dispute this Notice of Administrative Penalty in accordance with section 83.1 of the *Act*, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions in regard to this Notice of Administrative Penalty, please contact Dian Kuhney, Professional Conduct Review Officer at RECA.

DATED this 10th day of January, 2012.

REAL ESTATE COUNCIL OF ALBERTA

Per: *Charles Stevenson*, for
Bob Myroniuk
Executive Director