

THE REAL ESTATE COUNCIL OF ALBERTA

**IN THE MATTER OF s. 39(1)(b) and s. 41 of the
Real Estate Act, R.S.A. 2000, c. R-5 (the "Act")**

**AND IN THE MATTER OF a Hearing regarding the conduct of
Dave HUMENIUK, currently (and at all times material to this matter)
registered as Broker for Power Mortgage Centre Ltd.**

NOTICE OF HEARING

TO: Dave HUMENIUK
c/o Power Mortgage Centre Ltd.
220 Hawkhill Place NW
Calgary, AB T3G 3H5

TAKE NOTICE that you are required to attend before a Hearing Panel at the offices of the Real Estate Council of Alberta, 340-2424 4th Street SW, Calgary, Alberta, for a two-day Hearing in relation to the allegations stated below, commencing at 9:30 a.m. on each of the following dates:

Thursday, December 4, 2003; and

Friday, December 5, 2003.

AND TAKE NOTICE that you will be required to answer to the following allegations of conduct deserving of sanction:

1. **THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, Laura TODD on or about August 23, 1999, and thereafter forwarded to your (lender) client, MCAP Mortgage Corporation, you breached the following provisions of the Code of Conduct:
 - a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to

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adequately address the best interests of:

- i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
- ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.

b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:

- i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
- ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.

c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:

- i) your (borrower) client;
- ii) your (lender) client.

d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:

- i) this (lender) client;
- ii) this (borrower) client;
- iii) non-clients.

2. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, Mark DUNNING on or about November 23, 1999, and thereafter forwarded to your (lender) client, TD Bank, you breached the following provisions of the Code of

Conduct:

- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:
- i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.
- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
- i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.
- c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:
- i) your (borrower) client;
 - ii) your (lender) client.
- d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:
- i) this (lender) client;
 - ii) this (borrower) client;
 - iii) non-clients.

3. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) clients, Robert and Patricia WALL on or ABOUT November 10, 1999, and thereafter forwarded to your (lender) client, Bank of Montreal, you breached the following provisions of the Code of Conduct:
- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:
 - i) these (borrower) clients, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.

 - b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during the mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
 - i) your failure to disclose to your (borrower) clients certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.

 - c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:
 - i) your (borrower) clients;
 - ii) your (lender) client.

 - d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated

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information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:

- i) this (lender) client;
- ii) these (borrower) clients;
- iii) non-clients.

4. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, David MILSAP on or about November 12, 1999, and thereafter forwarded to your (lender) client, TD Bank, you breached the following provisions of the Code of Conduct:

- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:
 - i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.

- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
 - i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.

- c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:
 - i) your (borrower) client;
 - ii) your (lender) client.

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- d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:
- i) this (lender) client;
 - ii) this (borrower) client;
 - iii) non-clients.

5. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, Laura TODD on or about February 21, 2000, and thereafter forwarded to your (lender) client, RBC (Royal Bank), you breached the following provisions of the Code of Conduct:

- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:
- i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.
- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
- i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.
- c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction

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with:

- i) your (borrower) client;
- ii) your (lender) client.

- d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:
- i) this (lender) client;
 - ii) this (borrower) client;
 - iii) non-clients.

6. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) clients, Murray and Diane REW on or about March 27, 2000, and thereafter forwarded to your (lender) client, FNF-Calgary, you breached the following provisions of the Code of Conduct:

- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:
- i) these (borrower) clients, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.
- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during the mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
- i) your failure to disclose to your (borrower) clients certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information

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regarding the transaction which you knew or ought to have known.

- c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:
- i) your (borrower) clients;
 - ii) your (lender) client.
- d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:
- i) this (lender) client;
 - ii) these (borrower) clients;
 - iii) non-clients.
7. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, KINNEY on or about March 7, 2000, and thereafter forwarded to your (lender) client, Gibraltar Mortgage Inc., you breached the following provisions of the Code of Conduct:
- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:
- i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.
- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received

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during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:

- i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
- ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.

c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction;** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:

- i) your (borrower) client;
- ii) your (lender) client.

d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading;** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:

- i) this (lender) client;
- ii) this (borrower) client;
- iii) non-clients.

8. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, READ on or about December 6, 1999, and thereafter forwarded to your (lender) client, SunLife Trust, you breached the following provisions of the Code of Conduct:

a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests;** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to adequately address the best interests of:

- i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
- ii) this (lender) client, regarding the risk of fraudulent activity which you knew,

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or ought to have known was present in relation to the transaction.

- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
- i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.
- c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:
- i) your (borrower) client;
 - ii) your (lender) client.
- d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:
- i) this (lender) client;
 - ii) this (borrower) client;
 - iii) non-clients.
9. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., in relation to a mortgage application made through Power Mortgage Centre Ltd. by your (borrower) client, ELL on or about May 15, 2000, and thereafter forwarded to your (lender) client(s), Laurentian Bank of Canada and/or Bank of Montreal, you breached the following provisions of the Code of Conduct:
- a) **s. 2(a) Code of Conduct: Breach of Fiduciary Duties - Fail to act in the client's best interests:** the extent of the procedures followed to confirm information, documents, etc. received during this client's mortgage application process was inconsistent with your standard procedure and was insufficient to

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adequately address the best interests of:

- i) this (borrower) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction; and
 - ii) this (lender) client, regarding the risk of fraudulent activity which you knew, or ought to have known was present in relation to the transaction.
- b) **s. 2(e) Code of Conduct: Breach of Fiduciary Duties - Fail to disclose all relevant information to the client:** the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, combined with your knowledge and/or willful blindness as to the background of this transaction, resulted in:
- i) your failure to disclose to your (borrower) client certain relevant information regarding the transaction which you knew or ought to have known; and
 - ii) your failure to disclose to your (lender) client certain relevant information regarding the transaction which you knew or ought to have known.
- c) **s. 3(a) Code of Conduct: Fail to use best efforts to ensure the parties clearly understand the Industry Member's role in the transaction:** you failed to make sufficient efforts to clearly define your role in this mortgage transaction with:
- i) your (borrower) client;
 - ii) your (lender) client.
- d) **s. 4(d) Code of Conduct: Participating in the creation of any contract, document or form of communication that the Member knows or ought to know is false or misleading:** As a result of the below-standard and insufficient procedures which were followed to confirm information, documents, etc. received during this client's mortgage application process, and due to your knowledge and/or willful blindness as to the background to this transaction, you communicated information, documents, etc. related to this transaction which you knew or ought to have known would be false or misleading to:
- i) this (lender) client;
 - ii) this (borrower) client;
 - iii) non-clients.
10. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., between the dates of November 1, 1998 and July 31, 2000, in relation to mortgage applications made through Power Mortgage Centre Ltd. related to one or more of the properties listed on Schedule "A" (attached), you (recklessly or intentionally) failed to ensure that the

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brokerage operated in compliance with sections 2(a), 2(e), 3(a) and 4(d) of the Code of Conduct, and therefore you failed to ensure that the business of the brokerage was carried out competently and in accordance with the Act, the Bylaws, and the Rules, **contrary to s. 21(1)(e) of the Real Estate Act Rules**;

11. **AND FURTHER THAT**, as Broker for Power Mortgage Centre Ltd., between the dates of November 1, 1998 and July 31, 2000, in relation to mortgage applications made through Power Mortgage Centre Ltd. related to one or more of the properties listed on Schedule "A" (attached), you failed to have a system in place which would adequately monitor employees and verify that adequate supervision was being maintained within the brokerage, **contrary to s. 22(1)(d) of the Real Estate Act Rules**;

12. **AND FURTHER THAT**, between the dates of November 1, 1998 and July 31, 2000, in relation to mortgage applications made through Power Mortgage Centre Ltd. related to one or more of the properties listed on Schedule "A" (attached), the brokerage, POWER MORTGAGE CENTRE LTD., operated in a manner which was contrary to sections 2(a), 2(e), 3(a) and 4(d) of the Code of Conduct, and therefore the brokerage failed to comply with **s. 20(a) of the Real Estate Act Rules**.

AND TAKE FURTHER NOTICE that the Hearing Panel may make one or more orders outlined in section 43 of the Act, including, but not limited to, an Order cancelling or suspending any authorization issued to the industry member by the Council, an Order requiring you to pay a fine, and an Order that you pay the costs of the hearing

AND TAKE FURTHER NOTICE that the following Hearing Panel members will hear the allegations against you (and the evidence in support of same):

1. David Hicks (Chair)
2. Darrell Cook
3. Dan McClelland
4. Stephen Cohen (alternate)

AND TAKE FURTHER NOTICE that oral submissions shall be heard by the Hearing Panel. If you fail to attend the hearing, the Hearing Panel will hear the case and make a decision in your absence.

If you have any objections to the composition of the Hearing Panel, you must notify the Real Estate Council of Alberta of your objections, together with the reasons for your objections,

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within 14 days of receipt of this Notice of Hearing. If you fail to object to the composition of the Hearing Panel within 14 days, the proposed Hearing Panel will hear the charges against you.

AND TAKE FURTHER NOTICE that oral submissions will be made before the Hearing Panel. If you fail to attend at the hearing, the Hearing Panel will hear the case in your absence and make a decision.

DATED at the City of Calgary, in the Province of Alberta, this 18th day of November, 2003.

Real Estate Council of Alberta

Per:



Bob Myroniuk
Executive Director

SCHEDULE "A"

1. 120 Whitehill Place NE, Calgary, Alberta;
2. 1011 Olympia Drive SE, Calgary, Alberta;
3. 243 Erinwoods Place SE, Calgary, Alberta;
4. 212 Huntwell Place NE, Calgary, Alberta;
5. 1827 46th Street NE, Calgary, Alberta;
6. 1343 Pennsbury Road SE, Calgary, Alberta;
7. 410 / 412 40th Street NE, Calgary, Alberta;
8. 2231 44th Street NE, Calgary, Alberta;
9. 3019 Doverville Crescent SE, Calgary, Alberta;
10. 4352 Whitehorn Drive NE, Calgary, Alberta;
11. 908 Olympia Crescent SE, Calgary, Alberta;
12. 521 42nd Street SE, Calgary, Alberta;
13. 319 Fonda Way SE, Calgary, Alberta;
14. 235 Falshire Way NE, Calgary, Alberta;
15. 243 Erinmount Place SE, Calgary, Alberta;
16. 171 Erinridge Road SE, Calgary, Alberta;
17. 126 Doovertree Place SE, Calgary, Alberta;
18. 84 Springhaven Road, Airdrie, Alberta;
19. 10 Erin Woods Circle SE, Calgary, Alberta;
20. 43 Martindale Boulevard NE, Calgary, Alberta;
21. 1106 52A Street SE, Calgary, Alberta;
22. 1202 54th Street SE, Calgary, Alberta;
23. 1183 Marcombe Crescent NE, Calgary, Alberta;
24. 2035 40th Street SE, Calgary, Alberta;
25. 3048 Doverville Crescent SE, Calgary, Alberta;
26. 3616 Dover Ridge Drive SE, Calgary, Alberta;
27. 5416 4th Avenue NE, Calgary, Alberta;
28. 8307 Bowness Road NW, Calgary, Alberta;
29. 6226 18th Street SE, Calgary, Alberta;
30. 6441 19th Street SE, Calgary, Alberta;
31. 7622 22A Street SE, Calgary, Alberta;
32. 7624 22A Street SE, Calgary, Alberta.